

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

October 22, 2002

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

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

PRESENT: Mayor Thalhofer, Councilor Smith, Councilor Ripma, Councilor Thompson and Councilor Kight.

ABSENT: Councilor Rabe and Councilor Daoust.

STAFF: Erik Kvarsten, City Administrator; Marnie Allen, City Attorney; Jim Galloway, Public Works Director; Kevin Rauch, Environmental Specialist; Sarah Greif, Office Support Specialist.

GUESTS: See Attached List.

Mayor Thalhofer asked are there any agenda updates?

Kvarsten replied there is a revised agenda that eliminated consent agenda item 2.3.

2. CONSENT AGENDA:

2.1 Accept Minutes: October 8, 2002 Regular meeting.

2.2 Resolution: A Resolution recognizing the completion of capital improvements associated with the SE 5th Street and SE Harlow Avenue Improvement Projects and accepting them into the City's Fixed Asset System.

MOTION: Councilor Thompson 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.

Greg Calhoun Coach of the Troutdale Hawkeye's football team had the members of this years team introduce themselves.

Paul, leader of Scout Troop 657 stated that we are one of the Boy Scout troops in Troutdale. All of our scouts go to Walt Morey Middle School and Reynolds High School. There are several merit badges that we try to obtain; some of them require us to come to a City Council meeting. One is a communication merit badge and another is citizenship in the community. The Scouts introduced themselves.

4. PROCLAMATION: Veteran's Appreciation Day Event.

Mayor Thalhofer read the proclamation.

5. REPORT: A report from the Gresham Fire Department on current activities.

Riley Caton, Gresham Fire Chief, stated my appointment to Fire Chief in Gresham represents a couple of things: stability and change. I am a long-term employee of the City of Gresham. I have been there for 28 years. We have had many fire chiefs in the past 5 years. Two things that we are working on are recruitment of our Deputy Chief and we are putting together an internal strategic pre-planning committee. Our planning will take into consideration the entire region, which includes from the City of Portland to the Sandy River. A recent event that we were involved in was the fire in downtown Troutdale. The business owners in downtown stepped forward to lend a hand. You will be hearing more from us in the near future on this. We wished that we could have extinguished the fire in a very quick and easy manner but unbeknown to us, the old building had been two stories at one time and we were fighting a fire that had multiple layers of ceilings, rooflines and hidden spaces for fire to crawl into and it was nearly impossible to extinguish it the way that we would have liked to. I am always available if you have a question or issue that you would like to discuss.

Mayor Thalhofer asked how many firefighters were involved in the fire in downtown?

Riley replied there were about sixty firefighters here and there were approximately 20 companies. The jurisdictions involved were Gresham, Portland and Corbett. Backup companies came in to cover our vacant fire stations from Portland, Boring and Corbett.

Councilor Kight stated that is not the only old building that we have in Troutdale, have you stepped up the examinations of those buildings for fire safety?

Riley replied no we have not. We have an annual fire safety inspection program.

Councilor Kight asked did you examine the buildings that are immediately to the west of the buildings that burned to determine their physical integrity?

Riley replied the physical integrity of the building was examined almost immediately. That was in part the responsibility of the owner.

Councilor Kight asked do we know what caused this fire?

Riley replied yes, it was an extension cord that had packing material like Styrofoam, cardboard and paper piled on top of it. The extension cord was probably to power a lamp that had been on for some time and the cord had gotten very brittle.

Councilor Kight asked what changes do you see for the Troutdale fire station?

Riley replied one of the things I see happening after the first of the fiscal year is making some improvements to the fire station. The improvements will be to the living conditions. As far as the actual provision of fire protection here, at this point and time I don't see much change. However, that doesn't mean that we don't need to take a close look at it.

6. REPORT: A report from American Medical Response (AMR) on the 2002 River Safety Program at Glenn Otto Park.

Randy Lauer, Director of Operations for American Medical Response (AMR). We are here tonight to update you on the completion of the fourth successful season at Glenn Otto Park.

Mike Christie stated it was a pretty eventful summer. There are a few numbers that might surprise you. I would like to start by reviewing how the program operates. We staff Glenn Otto Park from 10am to 8pm, or whenever we can get everyone out of the park. Glenn Otto is staffed by two folks, both are open water and swift water rescue qualified first responders, EMT's or paramedics. We try to keep one paramedic on duty all the time. The general activities of the program are prevention. We hand out free personal flotation devices at Glenn Otto. We do at-risk behavior advisories and we talk with the media. We do police interface where we are generally working with someone assigned by Chief Nelson. This year Officer Kellogg did a great job for us. We also do hazard mitigation, pulling the trees out of the way, getting boats off of rocks. The technicians walk and swim the entire park everyday so we know what is there and what is under and on top of the water and what is on the beaches. The program has just finished its second year as a United States Lifesaving Association (USLA) National Certified Water Rescue Agency. We are the only USLA Certified agency in Oregon.

Mike Christie showed a power point presentation to the Council. (A copy of the presentation is in the packet.)

Mike Christie stated things went very well down at the park this year. The Troutdale Police Department and Parks Department did a great job this year. We continue to have a great partnership with Multnomah County Sheriff's Office Marine Patrol. Mayor Thalhoffer visited the beach frequently and we really appreciate his support. This program really wouldn't be a success without our partners at the Oregon River Safety Program and the Troutdale Boosters who generously try to put together the charitable side of the program. We think that we have been able to prevent some drownings at the park this year and we have been able to increase swimmer safety. I think the system that we have in place at Glenn Otto is working very well. The increased use of personal flotation devices is really dramatic this year. 1,600

were loaned out for free and there is an enormous number of folks that bring their own. The fact is that with the media support, we have been pretty effective in being able to let folks know where the bad spots are and where the good spots are to go swimming.

Councilor Ripma asked could you explain more about the police effectively handling the crowds at the park and the trouble?

Christie replied in the past the officers have physically spent time patrolling the beach. This year instead of the officers patrolling the beach, we patrolled the beach and alerted the officer of any problems and the officer spent most of his time in the parking lot reminding people of the rules and city ordinances. If they had alcohol the officer would point out to them that it is not allowed in the park. The officer made sure that people with vicious dogs didn't manage to go to the beach and people who seemed to be having any level of domestic and/or social conflict going to the beach the officer would have a chat with them and they would either leave or were much more pleasant when they got to the beach.

Councilor Thompson asked in your report you mention that the program appeared to be effective in changing the demographics of the visitor population, could you elaborate on that?

Christie replied actually that is in reference to High Rocks. High Rocks was initially portrayed as having some out of control behavior and we really didn't see that much of that. To a great extent we started having a lot of families showing up at High Rocks, not unlike what happened here between season one and two. We started out here with a lot more 15 to 25 year old males and it has transitioned to a family atmosphere now.

Councilor Thompson stated congratulations; you have done a great job.

Mayor Thalhoffer asked could you explain the High Rocks program?

Christie replied we took on the High Rocks Park, which is a shared jurisdiction between the City of Oregon City and the City of Gladstone, located on the Clackamas River between the I-205 Bridge and 82nd Street pedestrian bridge extension. That park is primarily a rock park. It does not have any beach and is used primarily for swimming and jumping off of rocks. We started there on the 18th of July. We entered into discussions with both cities about trying to help them out with that area and after several rounds of discussions at city council meetings we came to an agreement.

Mayor Thalhoffer asked you mentioned helping out Multnomah County Sheriffs on two or three occasions, could you explain that?

Christie replied in the counties of Oregon the County Sheriffs Office is responsible for all search and rescue whether it is land or water. The Marine Patrol responds and takes command of water incidents in Multnomah County. Since we are realistically more of a search and rescue resource in terms of the open water safety program, when Multnomah County Sheriff's Office receives a call that is on the Sandy River the responding Marine Deputy will call us on the radio and ask us to help out and if we are able to do so we respond.

Mayor Thalhofler asked how many times did you have to do that this year?

Christie replied four and that is the same as last year.

Councilor Smith asked in 2002 did the young children that were being rescued or assisted have life jackets on?

Christie replied two out of the four under the age of 10 did have life jackets on and two didn't.

Mayor Thalhofler stated job well done, thank you.

7. RESOLUTION: A Resolution delineating a solid waste collection service area within the City of Troutdale.

Mayor Thalhofler read the title of the resolution.

Kevin Rauch, Environmental Specialist, stated this resolution is merely a housekeeping issue to allow the city to legally administer an exclusive franchise for solid waste collection services within the city. An exclusive franchisee furthers the public interest in several ways: it is more efficient to administer one contractual agreement, having one company's trucks on the road lessens the impact of heavy vehicle traffic, and having one company structure simplifies everyday logistics of managing the program. In the past we have not gone through the formal process to delineate the service area. This resolution does that formally.

Councilor Ripma asked how did you notice that we needed to do this?

Rauch replied upon review with our legal staff they helped to assist in finding this.

Mayor Thalhofler asked did Waste Management bring this to your attention?

Rauch replied no.

Councilor Kight asked does this eliminate the competitive climate for making prices to the customers in Troutdale less competitive by only having one provider?

Rauch replied this will ensure one service area provided by an exclusive franchise.

Councilor Kight asked by doing that, do they have to bid on the franchise?

Rauch replied the franchise term is eight years.

Councilor Kight asked at that time it is opened up for others to bid on?

Rauch replied it can be.

Councilor Kight asked do they have an option for renewal?

Jim Galloway, Public Works Director, stated the city has considerable latitude on how it wants to approach that. If my recollection is correct, I don't believe that state law requires that to be a competitive process for the issuance of franchises. I think you have the option as to whether you would want to open that up to a competitive or bid type of process or whether you are satisfied with the current service provider. At the time we initiated the current service franchise we came to Council and asked for both public input and response from Council and the decision at that time was there seemed to be general satisfaction with the service being provided by Waste Management and we did not open it up to a competitive process we simply renewed the franchise.

Councilor Kight stated I can see where the majority of the people in Troutdale that have the 32 gallon service wouldn't be that adversely affected but how about the larger commercial operations that have the large drop boxes, this would preclude them from having an outside company coming in to service the drop boxes, is that correct?

Rauch replied yes.

Councilor Kight asked so if they could find someone that was cheaper they wouldn't be able to use that company that offers the lower price for drop boxes?

Rauch replied correct.

Councilor Kight asked have you had any response from the commercial folks here in Troutdale that use the drop box service?

Rauch replied we had one letter questioning the exclusive franchise, that was received over a year ago.

Councilor Kight asked is Waste Management, as far as you are concerned, competitive in the commercial service?

Rauch replied yes. I could ask Waste Management to speak more directly to that.

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

Barry Peine, Account Executive with AGG Enterprises. We were incorporated in 1977. We started with one truck; we have grown to over thirty trucks. We are now the City of Portland's largest locally owned hauler. We are probably right at the center of why we are having this discussion. I am here to answer any questions you may have.

Councilor Ripma asked could you please explain?

Peine stated as you are probably aware, once you leave the city limits of Portland all the areas outside of there are franchised. Inside the city limits of Portland it has always been

competitive on the commercial end of the business. This has been true for trash hauling. When it comes to recycling that has always been open competition. In the late 90's there was an advent of what they call material recovery facilities, which is known for an area where we can bring material to them and they extract whatever recyclables they find in the solid mixed waste. That combined with our experience of getting telephone calls from all areas of customers that are dissatisfied and asking us to come out and take care of them and we have to tell them that we can not do that. Finally there was an opportunity to test this in the legal system and we did that. In April of 2000 a Federal Judge granted us, under certain circumstances, to go into franchise areas and compete. Those circumstances were that it had to be dry solid mixed waste with recyclables in it and that we had to take the material to a material recovery facility. Most industrial accounts qualify under that criteria. Unfortunately our strategy has been to start with Portland and start working outwards, we have developed a lot of business in the City of Gresham. I have been attending environmental services advisory committee meetings and they have received approximately fifteen letters from large commercial accounts asking the City of Gresham to maintain the ordinance as is. That advisory committee took a vote last month and the vote was 4 to 1 to keep the ordinance as is. As long as it remains that way we can continue to do business with these companies. I only have one customer in the Troutdale area.

Councilor Ripma asked so you are opposed to the delineating of a service area in the city, is that your position?

Peine replied it is my understanding that your current ordinance would allow us to continue to compete for service in Troutdale. My position is that you maintain the ordinance as is.

Councilor Ripma asked Marnie Allen, does this resolution make any difference to his ability to compete in Troutdale?

Marnie Allen, City Attorney, replied yes and no. The resolution itself is just establishing the service area for an exclusive franchise. I think what Mr. Peine is intending to comment on are the proposed changes to the ordinance which exempted mixed solid waste under the trial courts decision in the AGG case that he is referring to. If AGG wanted to have a service area allocated to it in the city and obtained a franchise from the city, then perhaps he would be opposed to the resolution. Historically the way that AGG has provided service in the City of Portland and in other jurisdictions, and the way the litigation arose, was that AGG has not obtained a franchise from the city and has refused to do that. Initially the decision from the trial court was favorable to AGG, that was reversed on appeal by the Ninth Circuit, which is why we are amending the ordinance. The ordinance, as amended, would prohibit AGG from providing that service in the City of Troutdale.

Councilor Ripma stated that is the next agenda item. This resolution establishing a service area doesn't affect the right for someone to compete for recyclables that are taken to material recovery facilities, that is the next agenda item.

Allen replied correct.

Mayor Thalhofler asked does this resolution establish an exclusive franchise?

Allen replied it does and it implements the city's current and historical practice so it is not changing the way the city has franchised solid waste haulers in the City of Troutdale.

Mayor Thalhofler asked so AGG even with this resolution would still be able to come out and do business in Troutdale?

Allen replied no because the City's practice is to give that franchise to Waste Management.

Mayor Thalhofler asked could you explain what this resolution is doing?

Allen replied it allocates the entire City of Troutdale as a service area, which is required under the State law if you want to grant an exclusive franchise for that service area, so you would only have one provider servicing that area.

Mayor Thalhofler asked what does the exclusive franchise do for the hauler if AGG can come in and service some commercial accounts?

Allen replied AGG cannot come in and do that under the amendments to the ordinance, which is the next item on the agenda.

Mayor Thalhofler asked so if we pass this resolution AGG is out?

Allen replied if you pass the resolution and you amend your ordinance.

Mayor Thalhofler asked what happens if we pass the resolution and don't amend the ordinance?

Allen replied then you would need to decide how you wanted to treat the services that AGG was providing; whether or not you wanted to require a franchise for that or permit for that. We would have to go back to Waste Management and look at amending the franchise agreement with them. We would also want to make some other amendments to your ordinance so you are not allocating one service area an exclusive franchise.

Councilor Kight asked lets say nothing changes, obviously AGG could then come in and be a competitive hauler, is that correct?

Allen replied no. AGG would have to come to the city and apply for and obtain a permit to pick-up a very limited type of waste.

Councilor Kight asked would they also have to pay a fee to the city, other than just the permit?

Allen replied no.

Councilor Kight asked then would that put Waste Management in a non-competitive basis if they have to pay a franchise fee whereas AGG would not have to pay a franchise fee?

Allen replied I think that is a reasonable conclusion and probably one you would want to have Waste Management respond to.

Peine stated whatever the percentage is that the franchise haulers pay to the municipalities, I can tell you that with the situation in the City of Gresham, we have voluntarily paid those fees, and I would add that we either pay them on or before the due date.

Councilor Kight are you compelled by law, resolution, ordinance or contract to pay those? I heard the word voluntary.

Peine stated correct.

Councilor Kight asked so absent you doing this on a voluntary basis, you wouldn't have to pay them at all?

Peine stated it is our intent to pay these whether we have to or not.

Councilor Kight stated you did not answer my question. Are you obligated to pay them?

Peine replied not to my knowledge.

Terry Waddell, Waste Management, stated I was more prepared to speak to the next agenda item. To me this resolution is just a housekeeping issue and you do have a contract with Waste Management right now and you are just putting into place a policy that makes you legal in having a contract with us.

Councilor Ripma stated by having a delineated service district it doesn't affect your exclusive franchise.

Waddell replied correct.

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

No further testimony received.

MOTION: Councilor Ripma moved to adopt the Resolution. Seconded by Councilor Thompson.

Councilor Ripma stated I understand this to be housekeeping and to have our city rules comply with state law. It doesn't seem like it changes anything about the exclusive franchise that we have granted by decision to Waste Management. In general I favor it. I think there is good reason for the city electing to have an exclusive hauler, we have done that for years. It helps keep our residential rates low by not

allowing other haulers to come in and pick-up the more profitable industrial users. I think it is all part of the service to the city and it has been a good decision that we have made over the years. To the extent that this carries out our intent in what we have done for years, I think it is a good idea.

Councilor Thompson stated this just formally delineates the service area, which I assumed we had already specified in the franchise, this just clarifies that so I am in favor of it.

Mayor Thalhoffer stated I am also in favor of it.

Councilor Kight stated I am in support of this resolution.

Councilor Smith stated I also favor it.

VOTE: Councilor Ripma – Yes; Councilor Thompson – Yes; Mayor Thalhoffer – Yes; Councilor Kight – Yes; Councilor Smith – Yes.

Motion was approved 5-0.

8. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Chapter 12.10 of the Troutdale Municipal Code to remove provisions that established a permit system for persons providing the service of collecting and/or transporting exempt loads of solid waste for compensation within the City of Troutdale and reverting to an exclusive franchise.

Mayor Thalhoffer read the Ordinance title and opened the Public Hearing at 8:36pm.

Kevin Rauch, Environmental Specialist, stated in November of 2000 the City Council passed Ordinance #697, which was enacted in response to a ruling by US District Court, which entered a permanent injunction to prohibit the regulation of a certain portion of the solid waste stream. Ordinance #697 in theory complied with the District Court injunction. Upon an appeal to the District Court ruling, the US Court of Appeals overturned the injunction. Therefore, this ordinance before you is in effect returning the Solid Waste Chapter of the Municipal Code back to the way it read prior to the permanent injunction.

Councilor Ripma stated the decision on the appeal allowed jurisdictions to enforce franchises for all components of the waste stream with the exception of waste exempted under ORS 459A.075. Is that exception in our packet?

Rauch stated it is not in the packet but I can summarize it for you. Dry recyclable material that doesn't meet the state's definition of fair market value, hauling dry recyclable material at cost or paying for those materials, not receiving a fee to haul those materials. An example could be a steel or wood waste that a recycler will pay you for to take from you.

Councilor Ripma stated I just want to make sure that this ordinance is fully compatible with the Ninth Circuits decision. Essentially, then it would be an exclusive franchise.

Rauch replied correct.

Councilor Ripma asked am I understanding there is no exception, it would be exclusive.

Allen stated correct. It would be an exclusive franchise. The fair market value exemption that Kevin is talking about, a more general way to view that is more strictly recyclable material that has value that is exempt under state statute but also would be classified as property, which is what the Ninth Circuit decision rested on. If haulers were picking up and transporting property under a federal statute, local governments were prohibited from regulating that type of solid waste. In the trial court decision the trial court found mixed solid waste, some with material that had no value and some that had value was property, the Ninth Circuit said no that is not property that has value under the federal law.

Mayor Thalhoffer asked could you go over that again, this is somewhat complex for those of us that are not in this business?

Allen stated let me walk you through originally how this decision came in to being a lawsuit. What you had was exclusive franchises in jurisdictions that were given to haulers who pick-up a variety of solid waste from a variety of customers. AGG, in general under the lawsuit, they were going into Washington County in Beaverton and collecting mixed solid waste, which is waste that had some wet type of waste that typically would go to a landfill that doesn't have any value by selling it like wood or glass. They would pick-up those mixed solid wastes from commercial or industrial customers, not obtain a franchise and receive some value from separating out the recyclable or valuable material from the waste. Beaverton and Washington County took enforcement action against AGG and AGG challenged the city and county's authority to require them to get a franchise. The basis for their challenge was that there is a federal statute that says cities and counties are preempted from regulating routes, price and service of transportation carriers that haul property through the county and city. So the question became whether or not the mixed solid waste that they were picking up was property under the federal statute. The trial court found that yes it was property so cities and counties could not regulate it. The Ninth Circuit held that no it is not property even though there is some component of it that has some value, overall the mixed solid waste was not property and therefore the cities and counties were free to regulate it. The exemption under state law that is implemented in your ordinance basically exempts out recyclables or solid waste that generally you would view as not being mixed and having value. So your ordinance, as amended, complies with the Ninth Circuit opinion and what you did in the interim while the trial court decision was out there was said we are not going to require a franchise because we can't under the trial court decision for mixed solid waste, but we will require you to obtain a permit if you want to pick up that type of solid waste.

Mayor Thalhoffer asked so if we pass this ordinance AGG can not come into the City of Troutdale and do any hauling for any commercial or residential customers, is that correct?

Allen replied yes, except I don't know if they are in the business and can pick-up the property under the state statute that has fair market value.

Rauch stated the items that are exempted by state law; they would still be able to haul those materials.

Mayor Thalhoffer stated they could haul that but they wouldn't charge any fee for it, they would just haul it away and sell it, is that correct?

Rauch replied yes.

Allen stated traditionally what they have done is pick-up the mixed solid waste and they would be unable to do that.

Mayor Thalhoffer asked could they pick-up newspapers and not charge a fee?

Rauch replied they could from commercial accounts, not residential accounts.

Councilor Kight asked are our prices for households competitive with other cities of similar size?

Rauch replied yes.

Councilor Kight asked does the industrial customer end up subsidizing the household customer? If you said here is a contract and you can only pick up household and we are going to have someone else pick up the industrial, do the household rates go up?

Rauch replied the last rate review we did separated out the different streams, the commercial, drop box and the residential. Historically the commercial end did subsidize the residential but with this last rate review we got rid of the cross-class subsidies and looked at the actual cost of service in each class.

Councilor Kight asked if you have a non-franchised hauler come into Troutdale couldn't they end up cherry-picking the industrial accounts that have the more lucrative material that can be recycled? If we didn't pass this ordinance, is that what would happen?

Rauch replied correct, it can happen.

Councilor Kight stated it would happen because they would make their prices competitive so the more lucrative waste stream would be picked up by outside haulers and in fact Waste Management would be at a non-competitive basis because they have the franchise fee which they have to absorb in the cost of operations which the others do not because all they would have to do is pay for a permit, is that correct?

Rauch replied yes. There are other services that the franchise hauler provides to the city; they help with the spring clean-up event and other events like that.

Councilor Kight stated and the non-franchise hauler is not required to do that, is that correct?

Rauch replied correct.

Councilor Kight stated that Mr. Peine, a non-franchise hauler, indicated that his company pays voluntarily the franchise fee for a particular pick-up. But what you have shed light on is that there are other community services that our franchise hauler provides. Even though AGG is willing on a voluntary basis to pay the franchisee fee, that doesn't include all of the cost because of the fact that Waste Management provides community service where AGG would not do that and wouldn't have any idea what those costs would be to incur, therefore they couldn't fold those monies back into the city, is that correct?

Rauch replied that is accurate.

Councilor Kight asked is there anything else that Waste Management provides?

Rauch replied the terms in our franchise agreement, hours of operation, all of the specifics that go into their hauling operations wouldn't be enforceable to another hauler.

Councilor Kight asked how much is the permit fee?

Rauch replied it is \$400.00 per year.

Mayor Thalhoffer asked is there anyone here to speak to us on this item?

Barry Peine, AGG, stated the original permanent junction that was issued in April of 2000 was in fact overturned by the Appellant Court in April of this year. This is not over. This has ramifications from coast to coast. We obviously are very much in favor of competition. I think that your commercial constituents recognize the value of competition. We are proponents of competition versus franchises. There are attachments to this court case that are far outside our jurisdiction, which is the State of Oregon. It was mentioned tonight about what is being charged by commercial haulers and subsidizing residential trash hauling. I had a meeting with Mayor Becker and he posed the same question and I wrote him a letter which reads, "Mayor Becker, when I met with you in your office several weeks ago you posed an interesting question. Does commercial trash removal pricing help subsidize and relieve residential pricing in a franchising environment? This letter is in response to your questions. I have enclosed the published residential rates for both Gresham and Portland for your consideration. For the purpose of comparison I selected the two most common scenarios." I used the 90-gallon trashcan with a 60-gallon yard debris and the bottom line was the difference between the two was 2%. The other one I choose was the 32-gallon trash and 60-gallon yard debris and the difference between those two was 8%. Incidentally, the Portland sanitation companies pay a \$70.55 per ton disposal fee, which includes the City of Portland Bureau of Environmental Service Tax of \$4.30 per ton. Sanitation companies outside of

Portland do not pay this in their respective areas. I believe here in Troutdale the haulers pay \$64.00 per ton. After taking this into account I am confident that you will agree with me that the residential rates in Gresham and in Portland are comparable. It has occurred to me that another strong indicator towards answering your questions perhaps lies in the puzzle surrounding why one of the Gresham franchise sanitation companies charges Gresham Public Schools one rate and Portland Public Schools, where it is competitive, another rate. In Gresham this sanitation company charges Gresham Public Schools \$11.85 per yard and the Portland Public Schools \$1.19 per yard for dumpster service. The same company charges Gresham Public Schools \$137.50 and Portland Public Schools \$55.00 for haul fees on drop boxes.

Councilor Ripma asked do you have a customer in Troutdale?

Peine replied yes.

Councilor Ripma asked do you have a permit?

Peine replied I don't know if we have a permit or not.

Councilor Ripma stated you should.

Councilor Thompson asked do you provide a lot of service to Gresham?

Peine replied yes.

Councilor Thompson asked is there major hauler Gresham Sanitary?

Peine replied Gresham Sanitary, Waste Management and there are others.

Councilor Thompson asked does Gresham operate under a franchise arrangement like we have?

Peine replied yes.

Mayor Thalhoffer asked similar to our ordinance?

Peine replied yes.

Mayor Thalhoffer asked how do you haul in the City of Gresham?

Peine replied my understanding is that when the original permanent injunction was issued, many of the municipalities amended their ordinance so that it would comply with that permanent injunction. When it was reversed, there were a number of municipalities that never changed it and in those cases we had to cease in doing business at that point. Until the municipalities that did change it revert back to the way it use to be, we can continue to do business because the ordinances allow that. In Gresham's case they were very open minded

about this. I think that the number of letters that they received from some of the more prominent commercial constituents influenced the committee to vote 4-1 that they maintain it as is. As long as your ordinance remains as is I can continue to do business and frankly I would like to do more.

Councilor Kight stated I believed you when you said that you paid the franchise fee to Gresham voluntarily even though it is not required. You were asked a question earlier by Councilor Ripma if you have a customer in Troutdale and you indicated that you did have a customer in Troutdale. You were also asked whether or not you were currently paying a permit fee to the City of Troutdale and you were not sure. The staff has indicated that in fact you do not have a permit and are not paying a permit fee. So you are operating in our city and for whatever reason your company has chosen not to bother to pick up and pay for a permit fee, is that correct.

Peine replied I cannot answer that.

Councilor Kight asked Mr. Galloway to come forward and clarify this.

Jim Galloway, Public Works Director, stated that is correct Councilor Kight. They have not applied for nor received a permit or paid the permit fee.

Councilor Kight asked are they required to pay a permit fee if they are doing business within Troutdale and picking up from industrial accounts?

Galloway replied yes, under the changes that were made to our ordinance in response to the initial court decision in 2000 we established a permit process to handle those particular loads that were covered by the court decision, which required them to obtain a permit from us.

Councilor Kight asked how long have you been picking up in Troutdale?

Peine replied I believe about a year.

Councilor Kight asked Mr. Peine indicated that the rates in the City of Gresham and Portland for households were subsidized by commercial and industrial accounts. Kevin indicated that that is not the case here in Troutdale. Could you reiterate that for us?

Galloway replied Kevin was correct. In the last two to three rate reviews we have been moving towards the situation where no one class of service subsidized another. In the data from our consultant, he looked at each class of service independently and tried to make each one self-sustaining so that no one class subsidized another and I think we have arrived at that.

Terry Waddell, Waste Management, stated garbage is not a simple subject; it is extremely complicated. When you start talking about other cities and how they do things it becomes more complicated. As far as recycling, Waste Management is recognized nationally as one of the leading recycling companies in America. We do have a material recovery facility and

we take any items that we can to those facilities. We are monitored by the regulatory agencies as to what comes out of the back end of those facilities and we have to keep that to a certain percentage otherwise we are in trouble and fined. We recycle more items than is even required by the cities and the counties that we serve. Because we are who we are, we are watched more closely than some of the smaller companies. We are very careful about our reputation and we are very careful about what we do. We also compete in Portland where the market is open, and we do compete against AGG. It is very difficult to take a competitive market like Portland, where the city has decided not to franchise, and compare it to a Troutdale where you have decided to keep one hauler. In the AGG case, that is final in the State of Oregon. There were two AGG cases, we call them AGG 1, which was in Washington County and we had another AGG case, which was with Milwaukie and Clackamas County. Those were ruled on and we lived with them for a while. They were appealed and just recently within the last few weeks it was decided that the Oregon Supreme Court would not hear those again and it is a dead issue in Oregon. There is an issue going on in California. The rulings did confirm that the cities and counties can decide what they want to do with solid waste in their jurisdiction. They can open it up to competition or they can have exclusive contracts. Removing any part of the solid waste stream does throw the system off. It is true that other jurisdictions, when the AGG situation started, put in ordinances such as you are talking about tonight that because of the original ruling by the judge allowed AGG and other companies to come in and get permits and haul the dry solid or mixed loads in drop boxes, which are ten yards or above in size. Gresham is the only city to my knowledge that has decided not to rescind that ordinance. Milwaukie, Clackamas County and Washington County if they have not already rescinded the ordinance they are in the process. Regarding the letters from customers that say that they either are not happy with the franchise system and they really want to have another company come in, my experience has been that those letters have been solicited by companies that come into an area that is not franchised, and may have said, write a letter to the Council and let them know you are not happy. I do think that Councilor Kight brought up an important point that there were no requests for permits. AGG could have come in and requested a permit and began hauling legally for this length of time and did not do that.

Councilor Ripma asked do you have a view or could you provide an explanation to the interesting statement made by Mr. Peine regarding the \$11 per yard charge to schools in Gresham versus \$1 per yard to other schools?

Waddell replied you have to remember that the hauling company that he is referring to is working in Portland, which is a competitive market and there are no restrictions on what they can or cannot charge a customer. I don't know how you can compare a Portland with a Gresham where the rates are set. Gresham City Councilors have set the rates for what the five companies in Gresham can charge their customers. There really isn't any comparison between the two markets.

Councilor Ripma stated it seems like such a huge disparity.

Councilor Thompson asked are you saying that Portland is an open market for garbage haulers?

Waddell replied for commercial.

Councilor Thompson asked there are no regulations for them?

Waddell replied there are regulations for the haulers.

Councilor Thompson asked what does that do for the rates?

Waddell replied it is whatever the market will bear.

Councilor Thompson asked are they generally lower than they would be in Gresham or Troutdale?

Waddell replied I think you will find some lower, honestly I don't know. I would have access to that information since we do work in Portland but I don't have personal knowledge.

Mayor Thalhoffer asked can we get that information?

Rauch replied I can attempt to get that information for you by the next meeting.

Councilor Kight asked besides the franchise fee that you pay to the City of Troutdale, you also indicated that you provide community services to the city as well. Do you have any kind of a financial figure of what those community services that you provide to the city cost your company?

Waddell replied I don't have that information.

Councilor Kight asked Mr. Rauch, can you answer that question?

Rauch stated I could attempt to put together a figure for you, I doubt that it would be exact.

Councilor Kight asked and could you put together a list of the different things they do provide as community service. What we are looking for is a picture of what the franchise hauler provides as opposed to someone that comes from outside the city and just cherry picks the industrial accounts.

Rauch replied sure.

Mayor Thalhoffer asked since commercial garbage is not regulated in Portland, do we have a situation where you have "A" company and across the street you have "B" company, different businesses and you have garbage trucks all over the city. Isn't there some kind of regulation about that?

Rauch replied on the drop box side of the market there is not. We could have ten businesses with ten different drop box haulers on one block.

Mayor Thalhofler asked does that create any problems?

Rauch replied I could ask Portland and see what kind of answer I get.

Waddell stated it is a lot of trucks out on the road. One of the benefits of keeping the commercial in the franchise system is that the city retains the right to choose fair rates for the businesses.

Peine stated I am out there talking with commercial customers all of the time and making offers. I have been doing this for over nine years now. My experience in coming out to east county is at a minimum it s a 25% or more savings and we are still making money. I guarantee rates for 3 years. The comment about picking off the big accounts, there was a period of time when the original permanent injunction was issued and there was no mention about the type of containers that needed to be used. We were out in this area for a very short time and we were also doing very small accounts and on those smaller accounts I was at \$129 a month and they were paying \$178. Never once were my offers higher than what was being charged in this area. As far as drop boxes, in Gresham the franchise haulers had a set rate. In the City of Portland I can offer what I think I need to charge to make money.

Councilor Kight asked what do you provide to the City of Gresham currently in the way of community services?

Peine replied I don't know if we are providing anything. I think we have been is such flux with this whole issue that frankly it has been taking a lot of our attention. We are open to do those types of things. For example, one of our accounts in Portland called us up because they wanted to have a Fair Day and they wanted us to bring out a truck with a driver and allow the kids to climb all over the trucks and for us to show them how it works, and we did that.

Councilor Kight stated on more than one occasion I have called Waste Management when we had an area on the Sandy River where the corrections crew does a clean-up and they provided a free drop box and tipping fee, in other words it was a zero cost to the city. Is that the type of thing that you would be willing to provide to the City of Troutdale?

Peine replied I am sure my management would be willing to do that.

Mayor Thalhofler asked is there anyone else here to speak to us on this issue?

No further testimony received.

Mayor Thalhofler closed the public hearing at 9:28pm. A second hearing on this ordinance will be on November 12, 2002.

9. COUNCIL CONCERNS AND INITIATIVES:

Mayor Thalhfer stated I urge people to vote yes on Ballot Measure 26-41, which is the Troutdale parks bond measure.

10. ADJOURNMENT:

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

Meeting was adjourned at 9:30pm.

Paul Thalhfer, Mayor

Approved December 10, 202

ATTEST:

Debbie Stickney, City Recorder