

MINUTES
TROUTDALE CITY COUNCIL - REGULAR MEETING
TROUTDALE CITY HALL
104 SE KIBLING AVENUE
TROUTDALE, OR 97060-2099

7:00 P.M. -- OCTOBER 22, 1991

ITEM #1: PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Cox called on Councilor Wakeman to lead the pledge of allegiance.

City Recorder, Valerie Raglione, called the roll.

PRESENT: Bui, Cox, Fowler, Schmunk, Thalhofer [7:12], Thompson, Wakeman

STAFF: Christian, Cline, Collier, Gazewood, Ortega, Raglione, Sorensen

PRESS: Steve Amick, Oregonian

GUESTS: Sally Wakeman, Julie Omelchuck, Daniel Nuffer, Greg Wilder

Mayor Cox asked City Administrator Christian if there were any agenda updates.

Christian stated that Item #4 was not ready and would need to be removed from the agenda. That included the Public Hearing [#4] and the Ordinance [4a]. Christian also stated that Collier would be responding to a Council initiative regarding Investigation of Postlewait's request from the 10/8/91 meeting during Item #10 - Council Concerns and Initiatives.

ITEM #2: CONSENT AGENDA

Mayor Cox called this agenda item and stated Final Order/Findings of Fact for the October 8, 1991 Appeal were scheduled as item 2.2. He asked if Council wished to separate the motion to accept the Minutes as one motion and then have another motion to ratify the Final Order?

Council had no problem with one motion for items 2.1 and 2.2.

MOTION: Councilor Bui moved to accept the Consent Agenda [2.1 10/8/91 Minutes 2.2 Ratify: Final Order/Findings of Fact 10/8/91 Appeal]. Councilor Schmunk seconded the motion.

YEAS: 5
NAYS: 0
ABSTAINED: 0

Bui - Yea; Fowler - Yea; Schmunk - Yea; Thompson - Yea; Wakeman - Yea

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

Mayor Cox called this item. There were no comments from the audience.

4. PUBLIC HEARING: ORDINANCE: Imposing Water, Sewer, Street, Storm Water and Parks System Development Charges and Repealing Ord. #566.

4a. ORDINANCE: Imposing Water, Sewer, Street, Storm Water and Parks System Development Charges and Repealing Ord. #566.Declarations, Challenges, Ex Parte Contact
First Reading

Christian stated that at the time the public notice had to go on to meet the timeframe required, Wilder was going to have this item prepared and available. After date of public notice, Wilder had submitted a memo [included in packet]. That memo outlined his concerns which had been raised regarding a 'conflict of interest'. Wilder stated that he had chosen not to complete this item due to concerns raised.

Christian stated that SDC's were two-thirds completed and that Council had already reviewed the Capital Improvements Program [CIP]. All projects: storm water, sewer, water, streets, and parks in terms of long term capital improvements plans which had been before Council. Streets and parks were left to become part of a model that a financial consultant [Ken Rust] to determine the long term cost and financing for those improvements.

Christian asked that Council authorize the completion of these two pieces with Ken Rust as the consultant to prepare the Ordinance for the first meeting in December. Christian asked that should Council feel uncomfortable with the CIP and as well as proposed projects staff could schedule a work session with Ken Rust present to review the impact it would have on the SDC ordinance. All the programs had been reviewed, however, no dollars values had been set for streets, or parks. She stated that Rust could run the models to show the impact on the SDC rates for these if Council requested.

Councilor Fowler stated that he would like it to study prior to first reading. He had contacted people to attend and had to re-contact them when he discovered that this issue would be delayed. He thought it would be ready since it had been scheduled.

MOTION: Councilor Schmunk moved to authorize Ken Rust to complete the Systems Development Charges Ordinance. Councilor Bui seconded the motion.

**YEAS: 5
NAYS: 0
ABSTAINED: 0**

Bui - Yea; Fowler - Yea; Schmunk - Yea; Thompson - Yea; Wakeman - Yea

Christian assured Council they would have all the time they would need to review it before the reading for final adoption. She couldn't schedule a reading until she had the full and complete ordinance before Council -- for that she needed the financial model for Council review.

5. RESOLUTION: Regarding Membership City/County Insurance Services Trust Liability Risk Sharing Pool.

Mayor Cox called this agenda item and asked for Declarations, Challenges, Ex Parte Contact.

Christian stated this item required a Resolution as more of a housekeeping measure. The City had participated in a type of consortium of cities and counties throughout Oregon. It had proven to save a considerable amount in terms of the City's experience rate because they maintain a contingency pool to offset insurance rates for the City. The resolution was required for the City's continued membership.

MOTION: Councilor Schmunk moved to adopt the resolution as written. Councilor Bui seconded the motion.

**YEAS: 5
NAYS: 0
ABSTAINED: 0**

Bui - Yea; Fowler - Yea; Schmunk - Yea; Thompson - Yea; Wakeman - Yea

6. CABLE TELEVISION: Julie Omelchuck

Mayor Cox called this agenda item and asked for Declarations, Challenges, Ex Parte Contact.

Councilor Bui, City's representative on Cable Regulatory Commission, introduced Julie Omelchuck. He stated that the Regulatory Commission final recommendation to City Council as to what to do with large pool of money. A public hearing had been shown on tv which asked for public testimony. As a result of that and review of options available, the Commission felt that their recommendation of purchasing equipment in school education programs via use of VCR's and other equipment, would accomplish what the Commission wanted to do. Councilor Bui stated it had been a difficult decision. He recommended the Council ratify the Commission choice to 1] provide the bulk of the money for schools and 2] to set aside \$50,000 to ensure maintenance conformance to the contract that cities/county has with Cable. There had been incidences which nearly required the Commission to go to court due to Paragon not abiding to rules of contract. 3] A small amount, 10% to remain in the contingency fund Commission policy.

Councilor Bui stated it was his recommendation that Council approve the resolution adopting the Commission recommendation.

Mayor Cox stated that there had been favorable communication supporting the Cable for classroom type of program.

Councilor Schmunk didn't see a resolution in her packet.

Councilor Bui was asking that a resolution be prepared to adopt the recommendation from the Commission.

Christian asked if this was a one time contribution dealing with an excess of monies accrued since rates were deregulated and the return of the franchise fees had outstripped the costs of the Regulatory Commission?

Omelchuck stated that it was.

Christian asked Omelchuck to discuss franchise fees. A lease payment paid by utilities and the use of public right-of-way to do business and to offset the costs of public or public agencies maintaining the right-of-way while and as they do business. The franchise was written for 5% franchise fee [at the time the contract was negotiated] 3% of the 5% [60%] was to go to support Community Access television; [40%] to support the Regulatory Commission.

Christian stated that the 'gripe' was the franchise fee for rental of public right-of-way property and that the Regulatory Commission didn't need the full 40% which was allocated. There were jurisdictions that wanted to have access to part of the franchise money to go into their general funds [whatever costs are over running the Regulatory Commission]. The question was: the rental of the property and the spending of the excess accrued - was it a reasonable expenditure of money which could potentially go into the general fund? Or, did Council see that as a community benefit willing to contribute to the school program?

Christian stated that if Council felt that the money should go into the general fund, it would mean re-negotiation of the Intergovernmental Agreement that the County and 4 east county cities signed with the Cable company.

Councilor Thompson asked if the amount for the franchise enforcement fund? What does that mean what enforcement did the Regulatory Commission participate in?

Omelchuck stated that [pg. 5] the work plan was driven by actions of the Cable Company and the annual budget was set up to address a normal oversight, or enforcement of the franchise. If there were an issue that required excessive legal fees, research to enforce the franchise, the fees could easily exceed the annual operating budget. The Commission is quasi-governmental body into itself. The Commission could go to cities for help so the Commission contracted with the City of Gresham [paid at an hourly rate] for legal help and legal matters. It was a security factor for the Commission as well as the jurisdictions. If the Commission got into a situation and the legal costs were overrun without this in place then all jurisdictions would be involved in helping enforce the franchise agreement. It

also assured the Cable Company to know that the Commission did have resources available to enforce the franchise and, if need be carry through a legal process.

Councilor Thompson: Asked if enforcement was entailed? Did the Commission have the authority to force its desires on Paragon?

Omelchuck stated that the Commission had the authority to enforce the franchise agreement. The Commission, as a body, can levy penalties, file an injunction, those type of enforcement abilities. If the Commission were to recommend revoking a franchise that would have to go back to each jurisdiction and the Commission would then serve in an advisory capacity to those jurisdictions.

In talking about legal enforcement there was a good chance that it wouldn't always be the Commission in a offense move; there was a very good chance that the Commission could be enforcing the franchise on the defense which would be with the Cable Company suing the City.

Councilor Thompson asked if historically the Commission had cause to use the fund?

Omelchuck stated no. All issues that had been before the Commission had been resolved outside of a court scenario.

MOTION: Councilor Bui moved to authorize staff to prepare a Resolution supporting the Regulatory Commission recommendation. Councilor Schmunk seconded the motion.

**YEAS: 6
NAYS: 0
ABSTAINED: 0**

Bui - Yea; Fowler - Yea; Schmunk - Yea; Thalhoffer - Yea; Thompson - Yea; Wakeman - Yea

7. APPOINT: Selection Committee for Interview Process - Planning Commission and Citizens Advisory Committee Vacancies

Mayor Cox called this agenda item and asked for Declarations, Challenges, Ex Parte Contact.

Christian outlined past practices that Council had used in selecting applicants to Planning Commission and Citizens Advisory Committee.

Councilor Bui voiced his approval for the Selection process that had been used in the past.

Mayor Cox asked for a Council volunteer.

Councilor Bui stated if there was no other volunteer he would be pleased to serve as the Council member on the Selection Committee.

MOTION: Councilor Thalsofer moved that the City follow the established Selection Committee process, consisting of Mayor Sam Cox, 1 City Council member to Gene Bui, and 1 Planning Commission member Chuck Wolsborn be appointed to interview applicants for Planning Commission and Citizens Advisory Committee vacancies; and that the Citizens Advisory Committee Chair, Karen Burger-Kimber, be included with those members to interview applicants for the Citizens Advisory Committee. Councilor Thompson seconded.

YEAS: 6
NAYS: 0
ABSTAINED: 0

Bui - Yea; Fowler - Yea; Schmunk - Yea; Thalsofer - Yea; Thompson - Yea; Wakeman - Yea

8. RESOLUTION: Recognizing the Completion of Eighth Street Reconstruction and Accepting the Improvements Into the City's System as a Fixed Asset.

Mayor Cox called this agenda item and asked for Declarations, Challenges, Ex Parte Contact.

Christian introduced Ortega, Acting PW Director.

Jerry Ortega stated he was pleased to be filling in as the Acting Public Works Director. The resolution was before Council for action since the Eighth Street Reconstruction project had been completed. Ortega asked that this resolution be adopted and allow the improvements to become part of city assets.

Ortega discussed the sequence of events of this project and stated that the final quantities weren't in yet as he didn't have the total net cost. He would have them before Council at the next meeting. He didn't expect the project to exceed not under run 5-7% of the project.

Mayor Cox read the resolution by title.

MOTION: Councilor Thompson moved adoption of the resolution. Councilor Fowler seconded the motion.

YEAS: 6
NAYS: 0
ABSTAINED: 0

Bui - Yea; Fowler - Yea; Schmunk - Yea; Thalsofer - Yea; Thompson - Yea; Wakeman - Yea

Councilor Schmunk commented on recent news and felt that CDBG projects would be coming to end soon. This was largely due to misuse of these funds across the country. She stated the City had been very fortunate to use these funds.

Mayor Cox voiced his comments stating that it would be a loss Same as CETA

9. COUNCIL CONCERNS AND INITIATIVES

Mayor Cox called this agenda item.

Collier presented information regarding the Council direction at the 10/8/91 Council meeting to investigate the concern Walt Postlewait had in response to a letter with his name and address as the author of the letter. Postlewait had stated he was not the author of the letter. He had asked Council for an investigation of the issue from the City's Police Chief.

Collier stated since that time he had been supplied evidence by Mr. Postlewait which he believed to be very valuable. Unfortunately, at this time, the evidence couldn't be examined by the Oregon State Police Crime Lab since it was his opinion that a crime had not been committed. He had researched the ORS and contacted federal authorities. The U.S. Postal authorities didn't feel that there had been no federal statutes violated. He thought the evidence could very well identify the suspect that had initiated the letter but needed additional direction before going further.

Councilor Bui asked how much time had it taken out of managing the operations of the Police Department for the Chief to investigate this to this point and how much would he anticipate it taking to further investigate?

Collier stated he had spent approximately 30 hrs. to this point and estimated it would take another 60-90 hrs.

Councilor Bui asked if the results would be civil since there was no evidence that a crime was committed? Would Mr. Postlewait have to pursue this through the civil process?

Collier stated that there was a civil remedy but would not normally be initiated through law enforcement channels through a regular police investigation.

Councilor Thompson found it difficult to believe there was no crime. It meant you can basically send any kind of thing you wanted, when you wanted to - with someone else name attached to it.

Collier stated he had read the statutes even into gray zone but even at that, it was difficult to put into the criminal area.

Mayor Cox stated Mr. Postlewait would probably want to proceed with civil action.

Councilor Thalhoffer stated that the Council decision was only whether or not to have Chief Collier pursue the investigation. He favored that the City should stop at this time and leave the decision to pursue civilly with Mr. Postlewait.

Councilor Thompson asked if Collier could turn the evidence back over to Postlewait?

Collier stated Yes.

Greg Wilder spoke from the audience. He stated it was himself that was the subject of the letter. If the City choose not to continue, he would be pursuing it himself and he asked that Council approve release of information so either he and/or Mr. Postlewait could pursue it. It would be his intent to pursue civilly with or without Postlewait.

Councilor Fowler asked if it was given to someone involved would it then be public record? The information Chief Collier had? To any individual?

Collier stated that he would have to defer to City's legal counsel.

Councilor Fowler stated that his question was if it was given to any one person, wasn't it then public information for the rest?

Collier stated he couldn't respond.

Councilor Fowler stated then the Council shouldn't either -- to make the decision whether to give or not to give...

Christian stated that she wasn't an attorney either but Mr. Postlewait had turned it over to the Chief, when he had come to his home and she assumed that Mr. Postlewait would then make the decision whether he would turn the information or share the information at the time the property was returned to him.

Councilor Thompson stated that the property would probably go back to Postlewait and it would be his decision if he wished to share it with Mr. Wilder that would be his prerogative otherwise what to do with it.

Steve Amick stated that representing the Oregonian he would like to make a formal request. Inasmuch as a criminal investigation had come to conclusion and that investigatory material was now public record that it be turned over to him and his organization, in total.

Christian stated you mean the conclusion that he's reached?

Amick stated that the Chief had conducted a criminal investigation. The investigation is concluded, the City apparently is not taking any civil action and therefore the material is a matter of public record.

Christian stated she recognized his request and as soon as possible the City would check with the attorney, as soon as he approved his agreement, it would be turned over on his recommendation.

Amick then requested that it be as timely a fashion as possible.

Christian stated just as the law required.

Collier: Gave a report on the heart transplant surgery that Bill Farr had undergone.

Amick: Stated that he had spoken with the Chief Surgeon head of transplant program spoken with the Chief cardiopulmonary surgeon at OHSU. The surgery was made more difficult due to previous surgeries and scar tissues. There had been 50-100 people working on Farr with the transplant program. It was a good match, healthy heart they were extremely pleased with the heart taking over. He had been in surgery for 7 hours beginning at 2:00 a.m. He was on minimal life support assistance and on the critical list which was normal during the first 24-48 hrs. They expected he would be in the hospital for 10-14 days and could possibly return to work within 3-4 months.

Councilor Thalhofer thanked Amick for the follow through and detailed report of what took place.

Collier stated that anyone wishing to contribute to the Farr Fund could do so at the Mt. View Credit Union.

Councilor Schmunk asked for clarification of the Council decision regarding the issue of the evidence from Postlewait.

Christian stated she would like clarification from Counsel at this point about what is and what isn't appropriate to turn over for criminal investigation. She would be calling Jennings to find out his recommendation. It would go back to Postlewait since it was his property.

Councilor Schmunk stated that it wouldn't be pursued further from the City standpoint.

Christian agreed.

Councilor Schmunk then discussed the Parkway and expressed appreciation for the newsletter that had been sent out. There had been no letters in the past. She encouraged viewers and audience to read it.

Councilor Thompson gave a report as a member of the Steering Committee for the Regional Governance Commission it appeared to be a long process. The RGC was advising Metro Charter Committee to ensure it would be what everyone [local governments] would want.

Councilor Wakeman again addressed the Parkway stating there would be an Open House on October 29 from 6-10 p.m. At 7:30 there would be a presentation and discussion on the eastern corridors to be studied. He encouraged anyone interested to attend. After talking with Dave Simpson he found that

there would be no public hearings on eastern corridor other than the October 29 at Gordon Russell School. CAC would convene at 5:00 p.m. prior to the open house - at Gordon Russell - for citizens to attend if desired. He stated this would very definitely impact Troutdale greatly.

Councilor Thalhoffer addressed the letter from Columbia Gorge regarding the odors at the Factory Outlet Center. He asked if Council was going to take any action to alleviate odors prior to expansion or was that possible? Was there a Bandaid solution or stuck with odors as they are?

Christian stated it was both a subjective and sensitive issue. There were two odor producing facilities adjacent to each other 1] the Sewage Treatment Plant and 2] a sludge treatment operation. The City spends considerable monies on deodorizers put directly into the substance being processed to deal with the problem. The City owned only one process. It was such a subjective process that each facility could point fingers at the other. The City was using commercial deodorizers and the expansion would not increase the odor [City produced or not] won't affect the Plant in terms of producing more odor. A meeting was scheduled with Riley on October 23 to address specifically if there would be any opportunities for that potential increased odor that can be addressed in the actual contract. It was difficult to assign an emanating point of the odor. She stated that staff reports would be subjective on this issue and encouraged Council to make their judgements when the plants are operating.

Councilor Schmunk hadn't noticed the smells. She stated Camas smelled too.

Councilor Thalhoffer asked if in the lease with Wastewater Management was there any way...

Christian stated a copy of the lease would be included in the next Council package for review.

Councilor Fowler stated there were basically two odors 1] Chlorine treatment and sludge ponds at times you can smell and sometimes not. He didn't know what the differences were.

Mayor Cox stated that there were times when Wastewater Management was dumping or unloading that the odor was the strongest.

Councilor Fowler stated that it was strong when they were unloading.

Councilor Thalhoffer asked if there was going to be a workshops where these issues could be addressed i.e., basketball hoops?

Christian stated that she was going to ask Council about scheduling the second meeting in November to schedule workshop. Issues of concern appeared to be: Philosophy of SDC's; Basketball concerns; as well as other issues Council had been discussing.

Mayor Cox: Restated the October 29 meeting and invited everyone who could attend and urged people to attend including Councilors.

Councilor Bui commented on the resolution the City passed on something they had felt strongly about. The continual comments regarding the right to pass a resolution of that nature and the City of Troutdale had every right to pass a resolution for things they wanted.

10. ADJOURNMENT.

Mayor Cox called this agenda item.

MOTION: Councilor Schmunk moved to adjourn the meeting. Councilor Thompson seconded the motion.

**YEAS: 6
NAYS: 0
ABSTAINED: 0**

Bui - Yea; Fowler - Yea; Schmunk - Yea; Thalhoffer - Yea; Thompson - Yea; Wakeman - Yea

The meeting was adjourned at 7:56 p.m.

Sam K. Cox, Mayor

Dated: _____

ATTEST:

Valerie J. Raglione, CMC
City Recorder

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