

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

7:00 P.M. ~ DECEMBER 10, 1991

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

Mayor Cox called the regular City Council meeting to order at 7:00 p.m.

Mayor Cox asked Councilor Schmunk to lead the pledge of allegiance.

Mayor Cox asked Valerie Raglione, City Recorder, to call the roll.

PRESENT: Bui, Cox, Fowler, Schmunk, Thalhofer, Thompson, Wakeman

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

PRESS: Web Ruble, The Oregonian

GUESTS: Neil Erickson, George Harding, Bob Schmid, Rich Gushman, Dick Riley, Max Maydew, Leslie Sykes, Jeff Johnson, Jack Snook, Milton Foss, Shirley Prickett, Glenn White, Dan Friesen, Neil VanderVa, Shirley Welton, Dave Plum., Shirley VanGarde, David Ripma

ITEM 2. CONSENT AGENDA:

Mayor Cox called this agenda item.

MOTION: Councilor Bui moved to accept the consent agenda as written [2.1 Accept Minutes - 11/12/91 Regular Session; 11/26/91 Work Session; 2.2 Accept Business License Report - November, 1991; 2.3 Mayor's Proclamation 1991 -Proclaiming December 7-15, 1991 As Drinking and Drugged Driving Awareness Week]. Councilor Thompson moved to second the motion.

YEAS:6

NAYS: 0

ABSTAINED: 0

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

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

Mayor Cox called for comments. None received.

ITEM 4. REQUEST: Approval of NEW Liquor License Application [Shirley's Troutdale Cafe] 202 E. Historic Columbia River Hwy.

Mayor Cox called this item and asked the applicant to address Council.

Shirley Welton, 132 SE Sandy Dell Rd. Troutdale.

Councilor Thalhofer asked if Welton had been in the restaurant business prior to this application for license?

Welton had various businesses at the Coast for approximately 14 years. She had sold and/or leased her prior businesses to enable her retirement in Troutdale. She had stayed home as long as she could and decided she wanted to return to the business, but closer to home. The Cafe was empty and available for lease. She wanted to have a nice restaurant where alcohol could be served with meals. She stated she wasn't interested in having a hard bar serving hard liquor but wanted the liquor to compliment a nice food restaurant.

Councilor Bui when she anticipated the opening date to be?

Welton stated she would be opening during the second week in January, 1992.

MOTION: Councilor Schmunk moved approval of the liquor license. Councilor Thalhofer seconded the motion.

YEAS: 6

NAYS: 0

ABSTAINED: 0

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

ITEM 5. ACCEPT/APPOINT: Planning Commission Selection Committee Recommendations.

Mayor Cox called this agenda item. The Mayor called on Councilor Schmunk to make the presentation of information as a representative of the Selection Committee.

Councilor Schmunk stated she was on the Selection Committee due to Councilor Bui's absence from town. There were 10 applicants interviewed for the three vacancies upcoming on the Planning Commission. The three individuals selected for re-appointment were presently on the Commission. She stated it was a difficult decision because of the extremely qualified applicants. Three alternates

were also being recommended due to past experiences with positions being vacated prior to terms expiring.

The three applicants recommended for re-appointment were: Walt Postlewait, Frank Grande, David Ripma. The three alternates were: Shirley Prickett [1]; Max Maydew [2]; Leslie Sykes [3].

MOTION: Councilor Schmunk moved approval of three reappointments and three alternates. Councilor Bui seconded motion.

YEAS: 6

NAYS: 0

ABSTAINED: 0

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

Mayor Cox read all the names of the applicants interviewed, some of which were present and stood to be recognized as their name was called.

Mayor Cox read the Citizens Advisory Committee appointees which were approved for representation of specific districts/areas. A meeting of the Selection Committee for CAC was held on Monday, December 9th. Those attending were: Chuck Wolsborn, Karen Burger-Kimber, Mayor Cox, Councilor Schmunk. All applicants were appointed to represent their respective area.

Erik Somirs [1 North Industrial]; Shirley Prickett [2 County Farm/North West]; Kristi DeSylvia [2 County Farm/North West]; Gena Williams [3 Central/Old Town]; Heidi Wilson [3 Central/Old Town]; Janet Renfro [4 Sandy River Corridor]; Marv Hiebert [4 Sandy River Corridor]; Sally Wakeman [5 South West]; Robert Schmorl [5 South West]; Max Maydew [6 South Central]; Bob Johnson [6 South Central]; Stan Hymel [7 Beaver creek]; Anthony Leto [7 Beaver creek]; Vera Carlson [8 Sandee Palisades]; Paul Rabe [8 Sandee Palisades]; Kenneth Sessler [9 Sweetbriar/South Troutdale]; Betty Lou Finch [9 Sweetbriar/South Troutdale]; Karen Burger-Kimber [A-1 (at large) Community Historic Natural]; Brian O'Grady [A-2 (at large) Community Service Uses]; Neil Handy [A-3 (at large) Downtown Business]; Sally Emrick [A-4 (at large) Development Interests]; Gina White [A-5 (at large) Business Interests]; Leslie Sykes [At large]; William Paugh [At large]; Michael West [At large]; David Brown [At large]; Spiro Sassalos [At large].

Councilor Thalhofer stated the listing was outstanding and recognized several of the names as individuals being involved in community activities. He voiced his approval of such a good representation of the community and hoped to see good things from the Committee in the future.

MOTION: Councilor Thalhofer moved to approve all the appointments [as listed for CAC representation] to the Citizens Advisory Committee. Councilor Bui seconded the motion.

YEAS: 6

NAYS: 0

ABSTAINED: 0

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

ITEM 6. PRESENTATION: 1990-91 Audit Report

Neil Erikson

Mayor Cox called this agenda item.

Neil Erikson, Grant Thornton presented the audit report for the City. Erikson expressed his appreciation for the assistance and job well done in aiding the preparation of the Report to Pam Christian and Bob Gazewood.

Erikson reviewed the document for Council on key points contained in the Report. If a further analysis was needed he stated he would be back before Council to respond.

Erikson noted that Page 11 contained a copy of the Certificate of Achievement presented to the City for the June 30, 1990 Report. He commended the high standard of achievement that is required to receive this award.

The City financial picture was very good and Erikson ran through some of the charts contained in the report. The City's total assets had increased \$8 million with over \$6 million directly attributable to improvements made. The Capital projects indicated a substantial amount of activity. There were no expenditures in excess of budgeted amounts.

Erikson continued making specific comments to: NOTE L: pg. 24, and NOTE M: pg. 24 property tax limitation may be future impacts but not determinable at this date. Pg. 75; Pg. 79 for Property Tax Limitation information; Pg. 93 reporting requirements - no exceptions for items accepted; no material deficiencies - nothing to report.

Mayor Cox called for Council questions. However, due to the length of the report, there were none that were specific until Council had time to read the documents.

Councilor Fowler asked about the impact of measure #5?

Erikson stated there was nothing to report on at this time.

Erikson commented on the Performance review document. On page 4 he wanted it noted that the City addressed all comments in past. He stated that given the amount of LID's done and the incurring internal growth it would require ensuring necessary staffing in the future to handle that growth that would be consistent in the City.

Erikson asked for questions.

Councilor Thalhoffer stated the report indicated the City was in fine financial condition. He extended his appreciation to the staff, and was glad that the condition of the City looked to be getting better every year.

Christian asked Council that rather than officially accept report, to take the necessary time to review and this item would be on the agenda to take final action at the January 14, 1992 Regular Council meeting.

ITEM 7. REQUEST FOR APPEAL: Speed Board - David Ripma

SIDE 2

Mayor Cox called this agenda item.

David Ripma, 4220 S. Troutdale Rd., stated he had previously asked Council to request State Speed Control Board to investigate the 45 mph speed on Troutdale Rd. near Cochran [curves]. This was in the hopes of getting the speed lowered and reduce the accidents that were occurring in the area. Speeds were clocked on the straight away at 50 mph, which was posted 45mph. Speeds were clocked as high as 66 mph. A draft letter to Hoffstetter was included in Council packets which requested lowering it to 40mph on that stretch of roadway.

Ripma stated he had conversations with Chief Collier and Councilor Schmunk regarding the concern of the neighborhood. Shirley Van Gaard felt the request from Council should hold for 35mph not 40mph. Ripma requested accepting 40 mph for now and continue attempts to get it reduced to 35 mph.

Christian suggested sending a joint letter with County and City signatures to the State Speed Control Board, requesting the speed be reduced from 45mph to 40mph **or lower**.

Councilor Schmunk suggested asking for lowest rate we can get. The increased traffic from an additional subdivision [currently under construction] would definitely suggest a need for lower speed; work was also being scheduled to be done on the road.

Chief Collier suggested asking for the speed to be lowered to 35 mph. He stated it was very appropriate to request that speed be lowered and this was an appropriate time due to the new subdivision and the recent occurrence rate of accidents.

Christian stated that City Attorney Jennings had suggested additional support due to the new subdivision which should be addressed to the Speed Board. Speed Board works totally outside of jurisdictions.

Councilor Bui stated he concurred with Ripma regarding the speed limit varying up then down then back up in short distances on roadways.

Ripma stated the appeal would be taken to the full Speed Board which meets only once per year in March or April. His intentions were to keep on top of it to see that the opportunity wasn't missed for the appeal.

MOTION: Councilor Bui moved that a request be sent to the State Speed Board asking to review the request to lower the speed on Troutdale Road from 45mph to a lower speed on behalf of citizens of Troutdale. Councilor Thompson seconded motion.

YEAS: 6

NAYS: 0

ABSTAINED: 0

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

ITEM 8. CONTRACT FOR FIRE SERVICE - City of Troutdale/City of Gresham
TAPE 2, SIDE 3

Mayor Cox called this agenda item and asked for Declarations, Challenges, Ex Parte Contact. None were stated.

Christian reviewed material and stated the inclusions per Council request were now in the contract document. The formula calculations, as close as could be determined in terms of personal, materials and services and capital outlay were also addendums to the contract and were included in Council packets.

Councilor Bui updated stating Fire 10 wasn't willing to give the Troutdale station to Troutdale through a division of assets. Gresham intended to build a station in Troutdale -- a residence with oversized garages on two lots. They were willing to do that at a cost of approximately \$130,000 which could be sold at a later date if necessary. Fire 10 had sent a letter telling the City what they could and couldn't do.

Christian stated the station wasn't an issue with Gresham. That decision would be between the City of Troutdale and Fire District #10. She stated a letter was before Council from the Chairman of Fire District #10 and that when the letter was delivered by Woidyla, he had suggested the City disincorporate and annex to Gresham to save the .75 cents per thousand.

Christian stated representatives were present from Tualatin Fire District to offer another proposal.

Jack Snook, Fire Chief, Tualatin Valley Fire & Rescue and Jeffrey Johnson, Director of Community Services, Tualatin Valley Fire & Rescue - 20665 SW Blanton St., Aloha, Or. 97007, introduced themselves.

Snook began by apologizing for the late arrival in expressing an interest in offering a proposal to the City for fire services. He stated their intent was not to muddy any waters or decisions in any other proposals that had been offered, however, if they had a service which could be valuable to the area, they would like to be considered. He was before Council at this time to extend the offer of a proposal, if Council was interested. At this time, they were only making an offer to meet with the three cities

and representatives of Fire 10 since Fire 10 had contacted them regarding contracting Fire 10's services.

Snook stated they had been contacted by Fire 10 approximately 1 year ago regarding a possible merger and consolidation. The Board had declined the offer to look at Multnomah County. Then, six weeks ago they received another letter requesting they revisit the earlier suggested offer to provide contracting services with District 10. In November the Board directed staff to look into Fire 10 district and report back. He stated they would be visiting Fairview and Wood Village also. He reiterated that Tualatin didn't want to do something that wasn't wanted or desired. He did feel it was possible to maintain the District on an interim basis until some boundary decisions were resolved.

Was their enough interest in looking at another alternative to the situation? If yes, they would approach the three cities and Fire #10 to consider contracting services with their district. Snook again stated he was present only to get a sense of Troutdale's desire. If it was a done deal with Gresham that was no problem. They were here only on a fact finding mission.

Councilor Bui stated it wasn't a done deal. Fire 10 had an opportunity to do something similar to Tualatin several times but chose not to. He had questions relating to possible costs to contract with Tualatin Valley?

Snook stated currently it was at \$1.99/\$1,000.

Councilor Bui asked if what would be offered here would be at the same rate?

Snook stated some evaluation and assessments would need to be made on what it would take to provide staffing, equipment. A ball park of where they would be would be where Gresham was at \$1.90/\$1,000.

Councilor Thalhofer stated to be fair to all the citizens he was interested in looking at all options but why would Tualatin desire to spread out here to this area? Wasn't that jumping boundaries to do so?

Snook stated he was just directed to review the situation. There was significant excess capacity, people and equipment. They found that excess gave advantage to look at putting it to work rather than duplicate. The service was already paid for or being paid for and could be more efficient by putting it to work here. Administrative level and support staff could put excess capacity to good use. Philosophically it made sense to get more for public investment and could reduce costs from the \$2.65 it was two years prior; now it was \$1.99. Their budget was a 2.3% annual increase not the 6% compounded annually it had been. It had proven that consolidation and merger did work. He would like to see more regionalization regarding Fire services. There were two main reasons why Tualatin Valley would be interested in extending the services: #1- excess; #2 - philosophically. Have 2 battalions currently and they would just add 3rd battalion in this area. Have some assets here together with the significant area involving 88,000 people if it was done as group. He was unsure what the stance would be if Multnomah County went separately from the three cities.

Councilor Fowler asked if they were considering taking over all of Fire District 10? Also, if they would reconsider and take it upon themselves to contact with the three cities individually?

Snook stated they represented it as an entire Fire District. He didn't know if the contract with Portland could be broken for another 1 1/2 yrs.

Snook stated they would look at logical plan as interim step to ultimately planned within area. maybe offer interim situation where more thought and cooperation between fire agencies. There may be advantages in keeping district together - hold together and plan to work together. Could be a vehicle to get the County and three cities together as an alterative.

Councilor Schmunk asked if they're positions were elected?

Snook stated they were.

Council discussions continued.

Snook stated he would await to hear from City Administrator.

Christian stated Wood Village had already approved the contract with Gresham and Fairview had already approved the contract with Gresham. She asked if this sort of proposal was contingent on all three cities? All in or all out?

Jennings: If provide service for F.D. 10 go through Boundary Commission and voters. If challenged by any of the players unsure if would require going through either of those two.

Christian stated a major issue would be whether or not they would be in position at looking at absorbing the current employees? Snook stated that would be done to the best of his knowledge.

Councilor Bui gave background of three cities task force and decisions being interrupted at last minute by Fire District #10. He noted the correct that the City of Gresham offer was at \$1.87 per \$1,000. Fire #10 was at \$3.57 per \$1,000. It was his role to reduce the costs of services, where possible, and maintain the same service levels. The City of Gresham was offering Fire District #10 a contract which was separate of the three cities.

Christian stated in this case, she felt it was fair to know all the options. There may be more information on the contract proposed by Gresham to Fire District #10. It was a key to any discussions to Portland breaking contract with Fire 10. The City could assume a bigger headache and find out they aren't out of the contract with Portland with an extraordinary cost.

SIDE 4:

Councilor Fowler commented that the only answer was for the three cities to consolidate.

Jennings suggested that Council consider passing a proposal in January. That would allow adequate time to review proposals from everybody that is interested in making one to the City.

Christian/Gazewood discussed calendar dates for notification of the election for a levy - 30 day notice before time to file with County Elections Officer for May 19 Ballot. That would be dealt with on a staff level and before Council at the appropriate meeting(s).

Council consensus was to consider a proposal, with more definitive costs from Tualatin Valley Fire & Rescue. Snook stated he would prepare what is necessary for the regular Council meeting January 14th.

Bui what if Gresham wanted to get in on this too? Snook: There are people that can see a Tri-County Fire District.

Christian suggested that the Fire Task Force members be the representatives that meet with Tualatin.

Councilor Fowler stated this was like chasing our own tail when there are two cities that have already agreed to go with City of Gresham.

MOTION: Bui moved to table the City of Gresham's agreement pending a presentation to Fire Task Force members by Tualatin Valley Fire District prior to January 14, 1992. Councilor Thalhoffer seconded the motion.

YEAS: 5

NAYS: 1 - Fowler

ABSTAINED: 0

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

MAYOR COX CALLED FOR A 5 MINUTE BREAK AT 8:45 P.M.

ITEM 9. PUBLIC HEARING: ORDINANCE: Amending TMC 13.36.300 (E) Relating to Solid Waste Franchise Fee Increase from 3% to 4%.

Mayor Cox called this agenda item.

- 1: Open Public Hearing - 9:00 p.m.
- 2: Declarations, Challenges, Ex Parte Contact - None
- 3: Summation by Staff - Tony Norris gave report on needs requiring programs that take more staff time, educational and promotional materials. He then discussed the reasons for moving towards a regional standard.

Councilor Fowler asked in raising franchise fee are we raising rates for garbage as well?

Norris stated that the franchise fee would affect rates.

Councilor Fowler addressed the issue of taking percentage(s) of the haulers profits and why?

Norris stated Ege was responsible for programs on the street; staff was required to set the programs for him. With additional staff time being spent, that increased administrative costs for the City.

Norris stated Ege was only one of two haulers with their fee still at 3%.

Councilor Fowler: We are giving him an increase out of this increase?

Norris stated yes.

Councilor Thalhoffer said it seemed justified due to staff time increasing since there is more to do in setting programs which include the new regulations and requirements. Ortega stated there had been a substantial amount of time spent on dealing with these issues. He could certainly justify an increase based on increased needs of staff time.

Councilor Wakeman asked when the rates would increase?

Norris said that they were to go into effect January 1, 1992. Ege had a reporting form for Jan - Dec. and he has adjusted his reporting times to accommodate the schedule.

Councilor Wakeman stated there had been an increase recently...

Norris: that was for tipping fees.

4: Public Testimony: Proponents -0-

5: City Council Questions

6: Public Testimony: Opponents -0-

7: City Council Questions:

Councilor Bui asked if it was true that landfill is completely full?

Mayor Cox it isn't a landfill but is close to being full.

8: Rebuttal

9: City Council Questions

10: Recommendation by Staff Norris supported the recommendation for an increase in franchise fees.

11: City Council Questions

12: Close Public Hearing Process: 9:07 p.m.

ITEM 9a. ORDINANCE: Amending TMC 13.36.300 (E) Relating to Solid Waste Franchise Fee Increase from 3% to 4% First Reading

Mayor Cox called this agenda item and read the ordinance by title.

MOTION: **Councilor Thalhofer moved to pass the Ordinance of the City of Troutdale Amending the Solid Waste Management Title 13, Chapter 36, Section .060, Relating to Changing the Franchise Fee for Solid Waste Collection from 3% to 4%. Councilor Thompson seconded the motion.**

YEAS: 6

NAYS: 0

ABSTAINED: 0

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

ITEM 10. RESOLUTION: Setting Solid Waste Collection Rates

Mayor Cox called this agenda item and read the resolution by title.

Tony Norris stated the premises for the rate analysis was to establish rates on a cost for service basis. The rates should be adequate to cover costs of implementing program; investment of equipment and services allowing for rate review on annual basis.

Staff recommendation was based on: 1] rates should be established on a cost-of-service basis by customer class; 2] rates should be adequate to cover the cost of providing service, allow investment in equipment and ensure quality collection and recycling services; 3] rates should be sufficient to allow the opportunity to realize a fair rate of return; rates should be reviewed on an annual basis; 4] rates should reflect the cost of providing service in the East Multnomah area. To include cost of service would be more of an increase at this time and it would be before Council at a later date. The increase would include yard debris programs.

Norris stated that the last increase for operating cost was in February 1990. In light of all new programs need to phase in cost of service.

Councilor Bui asked if information that two two new trucks were being purchased was correct? Norris stated that was correct.

Councilor Thalhoffer asked how long the Committee had been studying the issue?

Norris stated it had been well over 1 year. Consultant work had begun in February, 1991.

Councilor Thompson asked how soon before the recycling... ?

Terry Ege stated it would depend on the delivery of the truck. It could be implemented in January, 92 on a limited basis with existing equipment.

Councilor Thalhoffer stated that the request appeared to be well justified and studying at length by citizens committee.

Christian added when the State legislature passed laws part required cost of implementing programs be passed to customer, not that the hauler bear the burden of cost. Unless City wanted to subsidize recycling program, there was no choice.

Mayor Cox read resolution by title.

MOTION: Councilor Thalhoffer moved to adopt the resolution Regarding the Facts and Public Hearings Information, and Declaring the City Council Approval of Garbage Rate Increases Pursuant to Ordinance No. 309. Councilor Bui moved to second the motion.

YEAS: 6

NAYS: 0

ABSTAINED: 0

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

ITEM 11. REQUEST FOR TIME: Wastewater Management, Inc.

Mayor Cox called this agenda item.

Milton Foss, P.O. Box 147, Troutdale. Vice president of Wastewater Mgmt Inc. spoke at length about Wastewater Management from beginning the business to the current time. He expressed dissatisfaction with their relationship with the previous Public Works Director, Wilder. He was also concerned for the future of their business. [Copy of testimony on file in office of City Recorder.]

Council Thalhoffer queried Foss regarding his comments toward the end of his presentation about filing suit for harrassment; and asked... Why now, Wilder was no longer with City in any capacity?

Foss stated that he had no idea of what the Council intentions were regarding their lease, other than he heard the Council was intending to act against Wastewater Management's lease very shortly. Bennett had sent him a letter with a copy of a letter from Columbia Factory Outlet Center regarding the odors. Mauck was told to do something about odors from the treatment plant when the City built the plant. Foss stated all sewer plants have bad odor. If you build next to a sewer plant you can expect to get bad odors. He stated the area was an industrial area down there, what do you expect? He believed that given an opportunity to process the City's sludge, the Plant could be cleaned up.

Foss stated if a new plant is built, the new sludge pond which must be dredged out and situation will be worse. Sitting next door and business is recycling sludge and have permit to do it. Let's be friendly, take a look and pull together instead of apart.

Councilor Thalhofer stated that the odors weren't as bad in the winter as it was in summer. He stated we should work together to keep odor down in summer time until expansion completed. He agreed the best solution was to work together to reduce the odors while the expansion is being completed.

Foss exactly and agreed completely.

Mayor Cox made comments in defense of Wilder. He had been to Council several times regarding Wastewater Management proposals... he brought Wastewater's offer to Council and the price was why Council didn't go with it. Another thing stated was that only Wilder and Harding were at the meeting. Mayor Cox stated he too was there. Schmidt incident regarding gun and the Chief could address that issue, if necessary.

Schmunk: Do I understand you're here to tell us file suit against City unless we work with you?

Foss: Stated they were frightened the City was going to cancel lease. Harding had flown in for this meeting. They just couldn't loose the money that had been involved in the business.

Schmunk: Matter of public record now.

Foss: If given chance without all harrassment Wilder laid on us. Stacks of letters. Piciune matters.

Schmunk: You're within the lease now?

Foss: We're against it now. The issue of the Permit for operators was never addressed. The lease was signed under duress when Mr. Saylor, who was no longer there. Foss stated it was signed to try to stay alive a little while and it was better to sign than not to sign. He knew when the lease was broken the City would have to enforce it.

Thalhofer: As it is now, that is a violation of the lease agreement - you would get training if allowed, want to perform but can't. If can't due to circumstances beyond your control we can revisit the lease.

Jennings: DEQ didn't require the Permit, however, the City specifically asked that the permit be included in lease. There is a Doctrine of Impossibility - if performance is impossibility then enforcement may not be possible.

He asked that Council direct staff to respond to the presentation made by Foss with an analysis of the lease as it is now. The presentation could be made on January 14th. A rate adjustment was due on the lease June 30 and it would be timely to do it all at once.

Foss thanked the Council.

ITEM 12.PUBLIC HEARING: Ordinance Imposing Water, Sewer, Street, Storm Water and Parks System Development Charges and Repealing Ord. #566. Side 6/7

Mayor Cox called this agenda item.

- 1: Open Public Hearing - 10:00 p.m.
- 2: Declarations, Challenges, Ex Parte Contact - None stated.
- 3: Summation by Staff - Christian/Jennings

Councilor Fowler asked if this was a draft or the ordinance being worked on.

Christian stated this was a draft until it was approved. There had been considerable requests and this was the best response to the philosophical and methodology questions that were posed to Council. Issues regarding further clarification, additions, suggestions for deletions or suggestions for consideration would be addressed by the City Attorney. Christian outlined the options for action and re-stated this was an opportunity for public comment which could be incorporated into the ordinance as well as Council comment. Mr. Ken Rust had been before Council for a detailed discussion of the SDC's, using new state statutes as guidelines.

Jennings began review of the draft [pg. 8, section 3]. He stated the discussion was system development charges for water, sewer, streets, parks and recreation. When dealing with residential SDC's there was a state requirement that a payment plan be offered -- called Bancroft bonding [essentially the city/state finances through bond sales]. That was not a requirement for commercial developments.

Section 3 talks about using collateral [borrowing against city credit by pledging a mortgage or something like that - and allowing periodic payments]. It is repeated in Section 4. Council needs to decide whether or not commercial operators the opportunity to borrow, against city credit, to pay for SDC's. Staff was of the opinion that could create a significant problem since the developer would be borrowing money but not paying interest on that money. Jennings stated that the auditor would raise

that as an issue. Staff couldn't see the justification, absent the State requiring the city to do so -- to allow for collateral loans or essentially borrowing against city credit to pay for SDC's.

Jennings stated Sections 3 and 4 were lifted out of the City of Wilsonville's ordinance and it appeared there could be serious problems in view of Ballot Measure #5. This appeared to be an indefensible situation. The staff recommendation was, therefore, to omit sections 3 and 4 and any reference to any collateral or percentage payments and require the developer to pay the SDC's when they are due.

Jennings stated that a very important fundamental issue to remember was that other jurisdictions have allowed the commercial developer to borrow [or use percentage payments] and the city staff didn't believe it was defensible legally or fiscally, any longer.

Councilor Fowler asked, for clarification, the Bancroft act was what the City had used in financing some of the residential subdivisions - it was a good idea, got activity moving, generating, etc., these were being paid off immediately because the mortgage company wouldn't allow that prior to theirs. So that was being allowed for the residential. If that is done to a developer it was paid off before the house was built anyway, since the mortgage company wouldn't allow that to be in front of it. So you don't really have it occur as it states here. In commercial it allows almost the same thing unless the guy was working it out of his own pocket. Because whatever he is borrowing it on is occurring on the front side of it too.

Jennings stated it was important to remember that Bancrofting was absolutely mandated by the State to be offered to residential but not commercial. Municipalities didn't generally want to be in the business of loaning out money if it didn't have to be. What is seen in Sections 3 and 4 were attempts for cities to offer to commercial developers what they are offering to residential people. They were saying we can't really Bancroft you, but we will offer you an opportunity to pledge collateral and pay off in percentages. It made it difficult to retire funds, to forecast funds, and made it difficult for a city to operate in a negative kind of situation on capital improvements. Staff didn't see the justification for doing it.

Councilor Fowler asked about main street since there were several different approaches tried to get something done. One was the fact that a bancroft could do main street by signing a remonstrance to a bancroft act...

Jennings stated that was a local improvement district, not a bancroft.

Gazewood stated bancrofting and installment payments were nearly interchangeable since bancrofting act provided the authority to instal and was related to the bond issue.

Jennings stated Fowler was discussing a local improvement district which was very different from the individual developer paying system development charges.

Councilor Fowler asked if SDC's could be bancrofted on a house?

Jennings stated that the state process [223.208] talked to allowing individual residential owners of property the opportunity to pay SDC's off in periodic payments.

Councilor Fowler stated in otherwords an absolutely new construction never hooked to sewer or water before.

Jennings agreed, a newly leveled SDC.

Councilor Fowler stated a residence.

Jennings stated but in the analysis either a new construction or change of use. That was what the ordinance was talking about.

Councilor Fowler stated so the residential was out anyway because the residence is on it. If it isn't on it it pays the SDC's.

Cline, right. Because it would be a permit issue because construction of an establishment thereof. Unless there was a conversion of an existing ...

Jennings stated the state statute provided an individual who does a residential development [buys a lot] is going to have an SDC leveled against him. The individual buying the lot doesn't have to pay the SDC all at once if he chooses not to; and he has an opportunity to defer the payment over a period of time. What the state statute does not say is that same privilege extgends to the commercial user. Only residential.

Councilor Fowler, okay. We're talking about a man building a house on his own piece of property, one individual - one house. Not 40 acres of plots.

Jennings, correct. Sections 3 and 4 of page 8 was Wilsonville's attempt to give the same opportunity to the commercial user. The question, -- a policy question -- was Did the Council want to extend that same benefit [sections 3 and 4] to the commercial user?

Councilor Fowler stated that put him in a conflict now.

Jennings stated not necessarily - theoretically he could be but, he would have to have a project in front of City right now where that would be an issue. Anybody who has a particular financial interest right now, pending before the City, would have a conflict.

Jennings - any and all persons which included residential/commercial - a corporation was considered a person in this type of discussion.

Jennings stated the question before Council was, Are you going to allow a periodic payment method for handling SDC's for the commercial developer? That is what Sections 3 and 4 are, if no then 3 and 4 should be pruned out to delete any mention of periodic payments.

Jennings stated any user other than those called out in 223.208 will pay the SDC's when they are due.

Christian stated that there were two levels of rates: without financing and with financing when discussing the SDC issue with Ken Rust. One of the items to consider in terms of installment payments was setting the rate that would include financing charges [city's financing charges]. because the City would be required to sell bonds of some type to do the improvement and pay the interest as other people were paying installments to the City.

Councilor Fowler - with or without interest?

Christian stated she didn't know. The two figures on the chart only included the City's debt. Was it Council intent to include the City's financing costs to sell the bonds in the SDC charges. Meaning the City would, in another manner, pay the interest themselves rather than pass them on as SDC charges. Usually, the user fee rate structure would include the financing charges for any capital improvements - so the capital improvement itself would be paid for through SDC's and the City would bear the cost of the financing charges spread throughout the user fees.

Councilor Fowler stated that there was a chart with no numbers on the page with comparison of system development charges single family residential which gave a Troutdale comparison to other cities with a low of \$3,089 and a high of \$4,004 [chart compared by Ken Rust - staff didn't get a copy of it].

Councilor Thalhofer asked the staff recommended what and why?

Jennings stated staff recommended omitting periodic payments for collateralized payments against the commercial developers because it isn't fiscally responsible to do so without mandate by the State as there is for residential development.

Councilor Schmunk until the charges have been paid in full or adequate -- [or until adequate arrangements would be omitted and all references to anything other than payment in full would be deleted].

Mayor Cox asked for Council agreement. There was Council consensus.

Jennings stated Council would be silent as to any periodic payments and then refer back to ORS 223.208 which controlled SDC financing which states ...a "**property owner be paid by instalment**" but, property owner is defined as being the individual property owner of residential property. So, any reference is omitted to any periodic payments and then the state statute would fit for the people you want it to fit for [the people who are the residential property for their own.]

Christian stated this portion of the law was changed in response specifically to people in the mid county sewer issue when people were hit with good sized payments ensuing an existing residential area.

Councilor Schmunk agreed it should be omitted.

4: Public Testimony: Proponents

5: City Council Questions - Council consensus was reached to omit periodic payment language.

On Pg. 12, should have included a section Addition of Penalty Clause: Staff recommendation was to Article 11 add the penalty section which follow language currently in the Development Code providing for minimum fine of \$500 with maximum of \$1,000 and each day shall be treated as a new violation. The issue staff discussed was whether it should be a criminal penalty for that and the unanimous opinion was to go for a civil infraction for that which would be a fine.

Jennings stated the items discussed were the substantive changes staff recommended. There were a couple of clerical errors which would be changed also. All collateral and all percentage payments would be out based on Councilor Thalhofer's comments carried on by the full Council. It would be a pay as you go process, which is different from the current ordinance. Currently, it does allow, if someone objects to the amount of an SDC, it allows the payment of 25% and then it is measured... That would be deleted.

Councilor Fowler asked if that could be added to this ordinance. Jennings stated it could.

Councilor Fowler stated it was easy to measure sewerage out. a 3/4" meter will only hold so much water. Basically, sewage can be measured because you can't put more sewerage out than you can put water in.

Christian stated that a different loading of that water...

Councilor Fowler stated that the loading of the water could be tested. However, it didn't need to be required to have a big fancy system to just measure what is coming out of the sewer. If you take a development [i.e., Columbia Crossing] put the sprinkling system on one meter and sanitary water on another, you have instant measure on what's going back and don't have to check it at the effluent point.

Christian disagreed but stated Ortega would have to respond to the comments.

Councilor Fowler stated this was an opportunity for both the City and the individual responsible for the project of coming in and taking 20% of the SDC's until he is in operation and until the BOD's or

loading the sewer and what his volume was. It was fair, otherwise you were taking a shotgun from which you could add or detract...

Christian stated the SDC's were based on not just flow, but loading of the effluent.

Jennings stated that an issue staff discussed was if someone paid 25% down and went for two years, paying only that 25%, how do you justify that on the City books? They are now using City of Troutdale citizenry monies to finance their project for a period of two years without paying for the privilege of doing so.

Councilor Fowler stated the point was that it had been done. Two years, however, appeared to be a ridiculously long period of time... 90 days after starting up and collect a fair amount...

Jennings stated it was currently written for 'up to two years'.

Councilor Fowler stated it could specify up to 30 days after opening.

Jennings stated that the owner could state that it wasn't a fair amount of time to get an adequate measure. It appeared to be an unworkable standard. He asked Council to remember that the ability to measure is so much better than it was when the ordinance was written [6-7 years ago]. The ability to forecast was also much better than it was. Council could add it back in, however, Jennings stated it would be fraught with problems and he wouldn't want to have to explain it to a voter.

Christian to Riley stated that the discussion was developing a systems development charge and the loading of the discharge from a particular business - in terms of not just flow but suspended solids, BOD's, chemical content of the discharge... in the existing ordinance there were

Riley stated there were a number of design tables with studies done which state that a typical restaurant would produce so many BOD's, gallons of flow, suspended solids per day per seat of a restaurant. Those standard design criteria are typically used to assign loading rates from new businesses where there is no data. The City used them to charge the SDC charge based on how those total pounds relate to an equivalent residential unit.

Councilor Fowler asked how it was addressed when it became a large item to manufacture something - how it it determined exactly the production whether the initial figures are correct on the SDC charges?

Riley stated it was difficult sometimes. You can sometimes determine from the amount of water consumption.

Councilor Fowler - water in, sewage out?

Riley, yes. If it was a 'wet industry' where there is a lot of load discharged to the sewage then the City would want to say when that manufacturer opened their doors - have a sampling manhole outside so there would be a place to sample the waste and then make a determination as to how much waste was being discharged to the sewer.

Ortega stated that was done when Burns Bros. was first on line.

Councilor Fowler stated there was a pumping station there so that made it easy.

Ortega agreed. The tests were done that were necessary to determine what the usage actually was.

Councilor Fowler asked how the SDC's were handled? Was it handled with partial payment and then an adjustment afterwards.

Christian stated when the first SDC's were calculated for Burns Bros it was extremely high. They were asked to pay 25% and allow the Council the opportunity to change the calculations called for by ordinance. That was done. Prior to Burns Bros developing, the City had no experience and the table hadn't been used. Council changed the ordinance to coincide with the standard industry assignments of ERU's. Burns Bros. then paid what the new calculations called out.

Councilor Fowler asked if after they were in operations, was there ever a verification done of their SDC's to see if there was a plus or minus on it?

Ortega stated yes. They were now being assessed the correct amount. The adjustment was made.

Jennings stated pg. 7, section 6 would apply the calculations Riley discussed -- essentially across the board. Pg. 7, section 6 essentially stated the when there is the 'unusual situation', the City would be assessing that impact and possibly re-calculating. That allowed needed flexibility in the ordinance. In otherwords, when the unusual situation arises, [i.e., a person comes in running an extremely high load] the City would be allowed to assess that under some established administrative procedures to be done by the City Administrator.

6: Public Testimony: Opponents - Mayor Cox called for public testimony from opponents. There were none.

7: City Council Questions - 0

8: Rebuttal - 0

9: City Council Questions - 0

10: Recommendation by Staff - Jennings stated staff recommendation was passage of Ordinance with comments discussed by staff. He stated this was a First reading. Council

could call for the date of second reading. It would be before Council at the January 28th meeting for second reading and action.

11: City Council Questions - 0

12: Close Public Hearing Process 10:50 p.m.

ITEM 12a. ORDINANCE: Imposing Water, Sewer, Street, Storm Water and Parks System Development Charges and Repealing Ord. #566.

Mayor Cox called this agenda item and read the ordinance by title. He then called for Declarations, Challenges, Ex Parte Contact. There were none stated.

Christian stated this was draft form only and no action was required at this meeting.

MOTION: Councilor Thompson moved for passage of the ordinance with the amendments. Councilor Bui seconded.

Councilor Fowler stated he wasn't prepared for vote. The item was marked draft only and he would prefer to see the changes included in the final form before a vote and use that for final reading.

Jennings stated the was for first reading only but there was a motion on the floor to pass with the changes discussed. Anyone voting no would cause it to go to second reading.

YEAS: 5

NAYS: 1 [Fowler]

ABSTAINED: 0

SECOND READING - JANUARY 28, 1992

ITEM 13. RESOLUTION: Authorizing the Call for Bids for Wastewater Treatment Plant Expansion Project.

Mayor Cox called this agenda item.

Ortega stated this item was not ready for Council action at this meeting. It would be on a future agenda, however.

ITEM 14. ORDINANCE: Relating to the Retention and Destruction of Public Records, Appointing the City Recorder as the Records Officer; Providing for a Records Retention Schedule and Program; Providing for Administration and Enforcement Thereof; and Declaring an Emergency.

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

Raglione, City Recorder, stated she was prepared to respond to any Council questions. The ordinance was in response to HB 2974 which amended ORS 192 requiring that each state agency and political subdivision appoint a records officer.

MOTION: Councilor Schmunk moved to pass the ordinance as written. Councilor Wakeman seconded the motion.

YEAS: 6

NAYS: 0

ABSTAINED: 0

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

ITEM 15. DEPARTMENT REPORTS:

- Public Safety - Chief Collier reported that the Troutdale General robber had been located. •
- Community Development -0-
- Public Works-0-
- City Attorney-0-
- Executive-0-

Finance

ITEM 16. COUNCIL CONCERNS AND INITIATIVES

Schmunk - Stated that there was a lot of interesting information at the end of packet.

Fowler - -0-

Thompson - Very interesting reading. Thanks for adding

Cox - 0

Wakeman - 0

Thalhoffer - Stated he was extremely happy with appointments of Planning Commission and all of the CAC representation. He expected that great things would happen.

ITEM 17. ADJOURNMENT.

MOTION: Councilor Bui moved to adjourn the 12/10/91 Regular City Council meeting. Councilor Wakeman 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 11:00 p.m. 12/10/91.

Sam K. Cox, Mayor

Dated: _____

ATTEST:

Valerie J. Raglione, CMC
City Recorder

