

AGENDA
TROUTDALE CITY COUNCIL
8:00 P.M. -- City Council Chambers
104 SE Kibling
TROUTDALE CITY HALL


March 27, 1984

- (A) 1. CALL TO ORDER, ROLL CALL AND AGENDA UPDATE: Mayor
- (A) 2. CONSENT AGENDA:
 - 2.1: Accept: Minutes of March 13, 1984 - Regular Session
 - 2.2: Approve: Liquor License - Plaid Pantry
- (A) 3. ORDINANCE: Relating to any playground, sports or athletic equipment or structure.

SECOND READING
- (A) 4. ORDINANCE: Amending Section 7.40.140 of the Public Safety Code

SECOND READING
- (A) 5. AWARD: EDA Construction Contract
- (A) 6. ORDINANCE: Amending the Community Service District section of the zoning Ordinance deleting explicit site/size requirements and adding an impact statement requirement.

SECOND READING
- (A) 7. APPEAL: Encroachment License
- (A) 8. COUNCIL CONCERNS AND INITIATIVES
- (A) 9. PUBLIC COMMENT
- (A) 10. ADJOURNMENT.



Sam K. Cox
MAYOR

MINUTES
TROUTDALE CITY COUNCIL
MARCH 27, 1984 - 8:00 P.M.

The meeting was called to order at 8:02 p.m.

ROLL CALL :

PRESENT : Ron Burgin, Marge Schmunk, Dave Butzer, Mayor Sam Cox, Dan Lowe, Paul Thalhofer and Gene Bui.

STAFF : Pam Christian, Greg Wilder, George Haddock, Scott Pemble, Celine Gihring, Brian Freeman and Barbara Rossman.

PRESS : Lori Callister of the Gresham Outlook and John Enders of The Oregonian

GUESTS : Marty Gault, Barbara Carter, Bob Summers, Laura Ellickson, Frank Windust, William Tompkins, Mark Chase, Carol Chase, Jim Sheely,, Mike Russell, Chuck Garner, Richard Franklin, Steve Girard, Dave Steinfeldt, Jim Burch, and Steve Volker

AGENDA UPDATE

Pam Christian said there were two additions to the packet - one was a resolution accepting easements from Multnomah County and the other was authorizing the Mayor to enter into an Intergovernmental Agreement with the State Highway Department for the Columbia Highway Storm Sewer outfall.

AGENDA ITEM #2 - CONSENT AGENDA

Gene Bui moved to accept the consent agenda. Pam said that 2.2, the Plaid Pantry liquor license, should be considered separately. Gene moved that the March 13 minutes be approved and that action on 2.2 be held until there was discussion. Dan Lowe seconded the motion. Ayes 6 Nays 0.

CONSENT AGENDA - 2.2 - Plaid Pantry Liquor License

Pam explained that this was a liquor license request only. There have been no plans submitted nor have there been any approvals through any of the development processes of the City. Bob Summers, representing the Plaid Pantry, was there. Pam said the site has been identified and there were three recommendations the Council could make. A liquor license be approved without an established site design, a license be approved for any place, not make it site specific or a license be approved contingent upon the building being approved and going through the Planning Commission process. Pam and Scott made the recommendation that it be approved contingent upon going through the development process. Dave Butzer asked why they had to go through the process now. Mr. Summers explained that they apply for their liquor license prior to the building permit and design and review. He said the license was being asked for on the Handy site, Tax lots 116 and 119, South Columbia. He said the earnest money is written contingent on the OLCC permit and the building permit being granted.

Paul Thalsofer moved to grant the liquor license contingent upon the approvals of the Design Review, Planning Commission and other City processes. Gene Bui seconded the motion. Ayes 6 Nays 0.

Gene Bui wondered if there was any public comment. Laura Ellickson, 1118 S. W. Hewitt, said that there were four or five businesses with liquor licenses in downtown Troutdale and wondered if that wasn't quite a lot for one small area. Frank Windust said that in 1979 he applied for a zone change to put a convenience market on a piece of commercial property. The City Council said they would allow him to build a convenience market on his site but they would not allow him to sell beer or wine from that store. He wanted it on the record that he may be coming back to rejuvenate that application.

AGENDA ITEM #3 - ORDINANCE: RELATING TO ANY PLAYGROUND, SPORTS OR ATHLETIC EQUIPMENT OR STRUCTURE

Mayor Cox read the ordinance by title. Pam said this was the second reading and if passed it would go into effect in 30 days. Paul Thalsofer said he had talked with Jim Jennings about the people in an area getting together and joining in an agreement to indemnify the City from any damages or injuries sustained by any children. Brian Freeman said Jim Jennings had shared that conversation with him and that would not save the City any liability because in essence we would be shifting the burden to someone else for a negligent act of the City and that would be clearly against public policy. He said he was confident that a court would say you cannot by agreement absolve yourself of a negligent act. Gene Bui read a letter from the former mayor, Bob Sturges, in support of the ordinance. William Tompkins, Laura Ellickson, Carol Chase, Mark Chase, Barbara Carter, Jim Sheely and Mike Russell, Troutdale residents, all spoke against the ordinance expressing concern over where children would play. They did not want children to have to go to a park a number of blocks away to play. It was pointed out that bicycles, skateboards and hot wheels were also a danger on the streets and the City could not outlaw everything. There was concern that one citizen's complaint would cause the Council to do away with basketball hoops. Dave Butzer and Paul Thalsofer said that they were not against basketball, but had to consider the safety of Troutdale's children. Chuck Garner, a resident, said he agreed with the ordinance. Pam Christian wanted it noted for the record that a letter had been received from Paul Taylor, a citizen of Troutdale, expressing his opposition to the ordinance. Brian Freeman reiterated the legal opinion that the City would be liable if they did nothing about a known hazard. Besides the financial liability, the City has a moral obligation to the children's safety. Gene Bui said he sympathized with the citizens but there have been a series of cities in Oregon who have suffered from suits of this kind. Mayor Cox pointed out that there were going to be more basketball hoops put in the parks. Ron Burgin said basketball hoops on private property would not be effected and suggested people put hoops up in their driveways.

Mayor Cox read the ordinance by title again. Dave Butzer moved to adopt the ordinance. Gene Bui seconded the motion. Ayes 6 Nays 0.

There was a five minute break. Mayor Cox said Item #7 would be moved forward on the agenda.

AGENDA ITEM #7 - APPEAL: ENCROACHMENT LICENSE

Pam said that at the March 14 meeting the issue about encroachment of sideyard, a chimney constructed after the house was essentially finished, was discussed. Rather than taking down the chimney, the Council said a license could be taken out for the chimney. The builder and the property owner have expressed a desire to appeal the Council's decision. Richard Franklin, attorney for Chuck Garner, property owner, was at the meeting. Mr. Franklin addressed the Council concerning the \$1,500 fee for a license that is revocable. He said it would be difficult to market the property with this revocable license. Scott Pemble gave the sequence of events. He said construction of the fireplace was started without getting a permit from the City. The Building Official advised the contractor to acquire a permit and at the time a permit was applied for it was determined that the fireplace encroached into the side yard. The contractor was advised that a variance procedure was required. The contractor had asked the Building Official to review the work on the fireplace at that point and the green card issued was a provision to allow the contractor to construct the remaining one-third of the fireplace at his own risk and the variance procedure would have to be completed before the fireplace became legal. Steve Girard, the contractor, said there were three fireplaces in the subdivision that encroached into the sideyard setback and permits were given to those houses. He said he didn't think there would be any problem because some had already been constructed that way. Mr. Franklin said that Chuck Garner, the home owner, did not want to deny the City utility easements. He suggested there might be alternative easements. Mr. Franklin stated that the revocable license, as proposed, was practically worthless to Mr. Garner.

Paul Thalsofer asked the City Attorney's response to the license being worthless. Brian said the purpose of the license was to avoid a direct violation of the zoning code and the home owner having to remove the fireplace as a result of that violation. Mr. Garner addressed the Council saying that he was not notified about the last hearing. He asked if \$1,500 was reasonable for a fireplace he paid \$500 for. Dan Lowe suggested that the home owner, his attorney, the City Attorney and the builder have a meeting to try to see what could be worked out. Gene Bui agreed with this idea. Dave Butzer said more information was needed from all parties in order to clarify the situation. After further discussion, Gene Bui moved that the parties get together and come back with some alternatives. Pam Christian asked that one of the Council people, preferably one who had been on the Planning Commission, be in attendance at the meeting. Marge Schmunk said she would and also suggested Gene Bui. Gene then moved that the parties stipulate to the facts and that Marge Schmunk and he serve on the committee representing the City and come back to the Council with recommendations that the Council can act on. Marge seconded the motion. Ayes 6 Nays 0.

Pam Christian asked if Agenda Item #6 could be moved forward on the agenda.

AGENDA ITEM #6 - ORDINANCE: AMENDING THE COMMUNITY SERVICE DISTRICT SECTION OF THE ZONING ORDINANCE DELETING EXPLICIT SITE/SIZE REQUIREMENTS AND ADDING AN IMPACT STATEMENT REQUIREMENT

Mayor Cox read the ordinance by title. Pam said there had been a work session to go through the alternatives presented tonight. Celine Gihring explained the five alternatives on amending the ordinance and gave background information on what brought the change about. Ron Burgin said he was deeply concerned that public costs, property value and employment opportunities be asked of churches. He said this inevitably involved some kind of statement on the worth of religious beliefs. He said the majority of Community Service designations were churches. He felt it was not appropriate for a government to ask a church's worth and judge its worth to the City. Brian Freeman said these were appropriate questions to ask and he did not believe they were an infringement on constitutional rights. Ron said a church's worth was based on a set of religious beliefs. This would have to involve a valuation of that worth. Dave Butzer asked for the definition of public costs, property values and employment opportunities. Celine replied that public cost was what it would cost the City for fire and police protection and other services. Would the City be able to afford these services? Celine said many uses are encompassed under Community Service uses. Dave Butzer asked how other jurisdictions handled churches. Celine said they were handled under conditional uses. Scott said they were not put into a category with other uses such as a race track, correctional facility, treatment plant, etc. Gene Bui asked Ron Burgin what his recommendation was. Ron suggested Alternative #5 which eliminates #1 and that Point #2 eliminates having fire and police as areas definitely paid for as we can't require this of churches or schools because we don't have the authority to do that. Paul Thalsofer agreed with Councilor Burgin. Dave Butzer asked if Alternative 3 excluding churches would be acceptable. Ron said it would, but the Zoning Ordinance was not set up to do that. Howard Fosser, Dave Steinfeldt, Jim Burch and Steve Volker all spoke expressing their concern that a judgment be made on a church's worth to the community. Marty Gault said that the use of a church every day of the week, not just Sunday, needed to be considered and how those uses would effect the community. Dave Butzer said the restrictions had to be looked at for all Community Service uses, not just churches. Scott Pemble stated that the Zoning Ordinance is in next year's budget to be reviewed and the Community Service designation is one of the things to be looked at.

Ron Burgin moved to adopt Alternative #5 that deletes #1 and amends #2 to delete fire and police. Paul Thalsofer seconded the motion. Ayes 3 Nays 1 (Marge Schmunk) Abstentions 2 (Dave Butzer and Dan Lowe). Brian suggested this be a first reading because of the modification of the ordinance as first presented

AGENDA ITEM #4 - AMENDING SECTION 7.40.140 OF THE PUBLIC SAFETY CODE

Pam said this was an amendment to the Public Safety Code. It is the second reading and was approved at the last meeting unanimously. Mayor Cox read the ordinance by title. Marge Schmunk moved to amend the ordinance. Gene Bui seconded the motion. Ayes 5 Nays 0. Ron Burgin was not in the chambers.)

AGENDA ITEM #5 - AWARD: EDA CONSTRUCTION CONTRACT

Greg Wilder explained the engineer's overall estimate was \$523,883 and bids came in at \$432,859. This is \$13,000 below our estimated cost to the grant.

Dan Lowe moved that the City of Troutdale accept the bid of J. L. Arndt Construction Company for Schedule I and Schedule II in the amount of \$54,049.95 and \$76,658.48 respectively, that Bill Page Construction, Inc. be awarded Schedule III for \$69,977.00 and that Delph Construction Company be awarded Schedule IV for \$233,175.00. He also moved that this award be contingent upon EDA concurrence. Paul Thalsofer seconded the motion.
Ayes 6 Nays 0.

AGENDA ITEM #8 - RESOLUTION ACCEPTING EASEMENTS/MULTNOMAH COUNTY

Greg said they were asking Council's passage of the resolution accepting the utility easements from Multnomah County. Marge Schmunk so moved. Dan Lowe seconded the motion. Ayes 6 Nays 0.

AGENDA ITEM #9 - INTERGOVERNMENTAL AGREEMENT/COLUMBIA HIGHWAY STORM SEWER OUTFALL

Greg said this resolution dealt with an intergovernmental agreement with the State of Oregon. It involves the Columbia Highway Storm Sewer Outfall from Buxton to Beaver Creek. We have come to an acceptable agreement which requires the state to participate for one-third of the total construction costs not to exceed \$44,000. We are asking your approval to pass the resolution, authorize the Mayor to execute the agreement and for the City to begin to prepare preliminary designs and subsequently to enter into negotiations with Multnomah County for their level of participation.

Gene Bui so moved. Marge Schmunk seconded the motion.
Ayes 6 Nays 0.

AGENDA ITEM #9 - COUNCIL CONCERNS

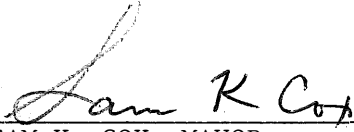
Ron Burgin reiterated that he is not questioning the judgement ability of the Planning Commission or City Council and that the questions he raised during the Community Service Impact Statement discussion were philosophical as to whether the questions asked were appropriate.

Marge Schmunk asked about 2nd and Buxton where all the mud is. Gene Bui also expressed concern. Greg Wilder replied that the situation would be checked into and that such situations would be covered in an upcoming drainage ordinance. Greg said the situation would be looked at.

Gene Bui announced that the Lions Club Pancake Feed is going to be on April 15.

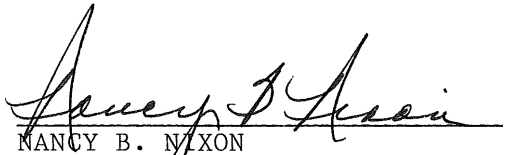
Dan Lowe moved to adjourn the meeting. Ron Burgin seconded the motion.
Ayes 6 Nays 0.

The meeting was adjourned at 11:30 p.m.



SAM K. COX, MAYOR
DATE SIGNED: 4/11/84

ATTEST:



NANCY B. NIXON
FINANCE DIRECTOR/CITY RECORDER