



CITY OF
Troutdale
AGENDA

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

March 9, 1999

Directly following the City Council Meeting

- 1. ROLL CALL**
- 2. Appeal Hearing:** An appeal hearing regarding the decision of a Business License Application denial.
- 3. ADJOURNMENT**



Paul Thalhofer, Mayor

Dated: 3-2-99

C:\AGENDA\030999CCSpecial.AGE

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

March 9, 1999 - Directly following the Regular Meeting

Meeting was called to order at 10:40 p.m. by Mayor Thalhofer.

1. ROLL CALL

Mayor Thalhofer asked for the roll to be called.

City Recorder Stickney called the roll.

PRESENT: Thalhofer, Smith, Thompson, Kight, Rabe, Daoust, Ripma.

STAFF: Galloway, Faith, Callan, Gazewood, Allen, Stickney

GUESTS: Robert E. Fredrikson

2. Appeal Hearing: An appeal hearing regarding the decision of a Business License Application denial.

Mayor Thalhofer called this item and stated Mr. Nelson had someone deliver a letter to us this evening explaining that he will be unable to make it because he was home with a terrible back ache. I recommend that we postpone this to another date when he can be here, I would suggest that we do that at the next work session that we have.

Robert Fredrikson stated that this matter is one that I came out to this meeting to address and I would like to not postpone it.

Councilor Ripma stated neither would I Mr. Mayor and I want an explanation as to what is going on.

Mayor Thalhofer replied this is my explanation the appellant is not here, I personally do not want to conduct a hearing without the appellant being here.

Councilor Ripma stated I thought you were excusing yourself from the hearing Mr. Mayor.

Mayor Thalhofer replied what I am saying is I don't think the Council should conduct the hearing without the appellant being here at least schedule it one more time.

Councilor Ripma asked did he ask for this hearing?

Mayor Thalhofer replied yes.

Councilor Ripma asked did he agree to the date and time?

Allen replied it is my understanding that he was sent a notice and he signed a certified mail receipt acknowledging notice of tonight's hearing.

Councilor Ripma asked when was that, how long ago.

Stickney replied that it was signed on the 27th of February.

Allen stated I think it might be beneficial to at least file with the Mayor and for members of the Council to at least look at the letter and for me to give you a little background. This letter was dropped off by a person who handed it to me for Mr. Nelson telling me that Mr. Nelson would not be here for this hearing. It does not request a continuance but it explains why his application should be approved.

Councilor Ripma stated well in that case Mr. Mayor I don't see the grounds for granting a continuance if he is not asking for one. Lets proceed, we do have people here to testify.

Mayor Thalhoffer read the letter submitted by Mr. Nelson which is contained in the Council packet. My recommendation and then I will step down if it is the will of the Council to proceed.

Councilor Kight asked as a compromise can we go ahead and just hear the testimony of the people here tonight?

Allen replied you could but the difficulty with that is that the code requires that the applicant be given the opportunity to ask those who testified questions and that would be difficult for him to do that if you continued it unless they came back and presented the same testimony again.

Councilor Ripma asked can we proceed tonight?

Allen replied yes, I am not aware of anything in the code or legally that would prevent you from going forward in his absence.

Councilor Ripma stated I favor proceeding. I expected it to be a long night and the gentleman has not even asked for a continuance and he knew about this.

Councilor Smith favored going forward.

Councilor Thompson favored postponing.

Councilor Kight favored going forward

Councilor Rabe favored going forward.

Councilor Daoust stated I don't know what the hurry is.

Mayor Thalhoffer stated it appears that the folks who want to proceed have the majority.

Mayor Thalhoffer stated that I will announce the proceeding and then I will step down because I am the person who signed the complaint based upon the recommendation of the staff. The matter before you is Mr. Nelson of Nelson's Painting appeal of Mayor Thalhoffer's decision to deny Richard Nelson a business license according to Troutdale Municipal Code 5.04.150(C). At this point I will step down and turn the meeting over to Council President Thompson and I will leave the Council Chambers.

Council Thompson stated that the applicant should be given the first opportunity to address the Council and in doing so should submit evidence that demonstrated why the applicant's business license application should have been approved. At this, or any stage of the hearing, the Council may ask the person who is testifying

to answer questions. Is there anybody here, since the applicant is not here, who wishes to address the Council in the applicants behalf?

Councilor Ripma asked should the letter from the applicant be read at this time since the hearing is formally taking place?

Allen replied I would formally make that a part of the record and make that a part of the evidence as well as his written request for an appeal.

Council Thompson read into the record the two letters submitted by the applicant which are contained in the packet. Again I will ask if there is anyone here to support Mr. Nelson's application for a business license.

no testimony received.

Councilor Thompson asked City staff to present their report and submit any evidence they want the Council to consider.

Chief Berrest stated back in the summer of 1998 I received an application for a business license from Nelson's Painting submitted by Richard Nelson. It is our practice in the City that the departments review the applications. One of the things we look for when it comes to the Police Department is any violation of state laws. In this case a criminal history check found that Mr. Nelson had a driving record and was found that he did have a criminal history. The information that I had at that time was probably not enough to deny the business license but I discovered that Mr. Faith in Community Development had substantial amount of information regarding Mr. Nelson and his lack of cooperation or willingness to work within the guidelines or rules of several cities within Multnomah County. I felt coupled with his criminal history I could not approve his application for a business license. I prepared a memo addressed to the Mayor requesting that he deny Mr. Nelson's request for a city business license. I did talk on the phone with Mr. Nelson today around 3:00 this afternoon. I asked him if he was aware that his criminal history could be submitted as evidence at the hearing this evening. He originally said he was not aware of that, so I then went through his criminal history with him and asked him if he concurred with those incidents that occurred. He did admit that they did occur but that they had happened over ten years ago and he didn't feel they should be considered in this process.

Faith stated that there is a long history of Mr. Nelson doing business as Nelson's Painting operating in violation of City of Troutdale Ordinances and ordinances of other municipalities in the Portland Metropolitan region as well as in violation of state law pertaining to registration of construction contractor businesses. Based upon that record, which I would like to summarize, is staffs contention that these violations pose an endangerment to the public health safety and welfare. Our encounters with Mr. Nelson go back to the summer of 1996 at which time I had received some complaints about proliferation of signs throughout the City advertising Nelson's Painting. At that time, on June 6th I sent a letter to Mr. Nelson pointing out to him that these signs were in violation of the City sign code and I also mentioned to Mr. Nelson that there was no record of his business being licensed in the City and that he would need to obtain a business license. Mr. Nelson not only did not respond to my letter but he failed to take any corrective action. The signs that were posted around the City indicated that Nelson's Painting was licensed, bonded and insured, this information was not correct because he was not licensed with the City and we found out that his bond had been canceled. In July of 1996, again because of proliferation of sings, Mr. Nelson was again notified by letter of these problems, at that time Mr. Jack Hanna had come on board as our Code Compliance Officer and submitted a letter to Mr. Nelson again informing him of the violations of the City sign codes and the fact that he was not licensed within the City and needed to do so. Again Mr. Nelson not only did not respond to the letter but he failed to take any corrective action in terms of obtaining his business license or in removing his illegal signs. Once again these signs erroneously stated that Nelson's Painting was licensed, bonded and insured. On September 12, 1996 we received a letter from the City of Portland which informed us that Mr. Nelson had been assessed a civil penalty of \$8,000 for the placement of illegal signs advertising Nelson's Painting within the city limits of Portland. On April 24, 1997 Mr. Nelson was notified by letter from the State

Construction Contractors Board that his registration was not active and that he may be working in violation of state law. The fact that he was advertising his business and was not registered with the state was the purpose of this violation. The letter noted that his registration had not been current with the state since April 3, 1996. On May 1, 1997, again proliferation of signs advertising Nelson's Painting were found throughout the City. Our Code Compliance Officer sent a notification of violation to Mr. Nelson again notifying him that he was operating without a business license and needed to obtain one. Again Mr. Nelson did not respond to the letter and did not correct these actions. On September 22, 1997 Mr. Nelson was cited into Troutdale Municipal Court for violation of both the sign code and failure of operating a business without a business license. The letter informed him of a court date of April 17, 1998. On November 5, 1997 we received a letter from the Construction Contractors Board that included a certified copy of Nelson's Painting history of his registration. At that time we discovered that there were a number of episodes from 1991 from which his registration had lapsed or had been canceled or suspended. Again, most notably was that from the period of April 3, 1996 to June 26, 1997 he was not registered with the state and therefore was not authorized to advertise or to operate a business as a contractor within the state. On February 25, 1998 Nelson's Painting received a citation and summons from Oregon City's Code Compliance Officer for illegal signs within the City. Once again Mr. Nelson was still operating without a license but continued to do business throughout the region. On March 3, 1998 Nelson's Painting received a letter from Clackamas County, again advising him that illegal signs were being placed on utility poles and stacked within public right-of-ways within Clackamas County and that they needed to be removed. On April 17, 1998 Mr. Nelson did appear in Troutdale Municipal Court to answer the complaints registered against him for illegal signs and for operating without a business license. He pleaded not guilty. On April 22, 1998 Oregon City sent a notice to Troutdale Municipal Court that Mr. Nelson had failed to appear for a March 10, 1998 court date in that city. On April 27, 1998 Mr. Nelson appeared in Troutdale Municipal Court which was the trial that was set for his violations. At that time Mr. Nelson was also served with a citation to appear in the City of Beaverton for violations of their sign code. The signs posted in Beaverton stated that Nelson's Painting is licensed, bonded and insured. Once again Mr. Nelson was never licensed to do business. On May 26, 1998 Mr. Nelson appeared again in Troutdale Municipal Court and he was found by our Municipal Judge to be guilty of the charges against him for violations of the sign code. Mr. Nelson was able to escape a judgement in terms of operating without a business license because he had conveniently applied for his business license just before his court appearance and so the judge left that matter open. However, the business license application that Mr. Nelson submitted was found to be incomplete because he failed to provide his date of birth and social security number therefore the Police Department was unable to do a background on him as is customary with business license applications. On June 5, 1998 Mr. Nelson received a letter from the Construction Contractors Board advising him that during the period of April 1996 to June 1997 that he was working and advertising in violation of State Regulation and that doing so could result in penalties of up to \$5,000. In June 29, 1998 Mr. Nelson once again received a letter from the Construction Contractors Board based upon a complaint that was registered with the Governors Office again, advising him that his registration with the Board had expired and to do work or advertise as a contractor would be in violation of State Law resulting in civil penalties. That is the conclusion of the actual citations and violations that I have. I want to summarize my case in terms of the entire purpose of the City's Business License requirements. We do have a business license requirement in the City to regulate business in order to promote the public health, safety and welfare. The licensing helps ensure that all new business activities are conducted in compliance with applicable laws and ordinances. Our business license code grants the authority to deny a business license on grounds that the applicant, a principal or the business activity fails to meet requirements of this code or is doing business in violation of this code or applicable state or federal law. It also states that the applicant, a principal or the business activity would violate or has violated any Ordinance or the Charter of the City any State or Federal criminal statute or any other law as a grounds for denial. Staff contention is that Mr. Nelson doing business as Nelson's Painting has placed advertising signs in various jurisdictions that state Nelson's Painting is a licensed, bonded and insured business when in fact these are not true. This advertising implies that this business is operating under the sanction of the City offering some protection of the welfare of the consumer. Nelson's Painting was not licensed to operate in any jurisdictions including its home office location of the City of Troutdale. For approximately fifteen months Nelson's Painting was not registered with the State Construction Contractors Board even though he continued to advertise himself as a licensed, bonded and insured contractors business. Mr. Nelson has been repeatedly notified of the violations and has

refused to obtain and or maintain the required licenses and registrations. Mr. Nelson has repeatedly made false advertising statements about his businesses ability to protect the safety and welfare of his customers against property damage or financial loss. The implied information found in Nelson's Painting's advertising gives the potential customer a false sense of security namely that they are being protected as a customer because the business is governed by various rules and regulations from governmental agencies. Mr. Nelson's continual refusal to abide by the regulations of various jurisdictions indicates that he does not intend to comply with any city regulations in order to provide his customers with an avenue of fair recourse. It is the responsibility of the City to make every effort possible to protect the welfare of its citizens including the protection of their property and investments when dealing with local businesses. Based upon Mr. Nelson's track record, a record which pronounces his content to City sign codes, business licenses laws and State registration requirements, the staff concurs with the Mayor's decision to deny him a business license and urges the City Council to affirm that decision.

Councilor Kight asked who is incurring the cost of the removing all the signs? Who actually ended up physically doing it?

Faith replied that I would like to ask Jack Hanna to come forward at this time.

Hanna replied ultimately the City paid for it. I removed probably, since we started this in 1997, thirty to thirty-five signs from the poles and stakes in the ground.

Councilor Kight asked how many hours have you put in on this particular individual or company?

Hanna replied I have spent a minimum of twelve to fourteen hours in court on this individual alone not counting the correspondence and sign removal, I probably have close to forty hours or more on this one case.

Councilor Kight asked has he had a history of not showing up in court?

Hanna replied he has a history in every jurisdiction that has had contact with him for not showing up for court or hearings.

Councilor Thompson stated anyone who wants to testify in support of the decision to deny Mr. Nelson's business license application should be given an opportunity to address the council and, in doing so, should explain why it was proper to deny Mr. Nelson's application.

Bob Fredrikson stated I live in the City of Portland. In 1993 I joined a committee of citizens in Portland that was trying to keep the city clean of posters and signs on utility poles. In 1995 I started compiling signs that I have seen into a database and over a couple of years in my database I have accumulated over 2,500 signs in the Portland Metro area. The number one perpetrator of posting signs has been Nelson's Painting. He exceeds the number two perpetrator by seventy percent. I printed out a list of the Nelson's Painting signs from my data base (marked as exhibit 3) it is five pages long and one hundred forty signs. Half of these signs were put up before May of 1996. The other half were put up after May of 1996 when his registration expired. These are the kind of signs that he was putting up (two signs marked as exhibit 1 and 2) stating that he is licensed, bonded and insured. I testified at the City of Portland when Nelson did not show for his appearance before a hearings officer. The hearings officer assessed him with \$8,000 civil penalty. Then he wrote a letter to the hearings officer, he denied receiving four notices from the City all of which were properly addressed to his address here in Troutdale. He didn't show but he asked for a re-hearing. The City ended up cutting him a deal. They cut the fine down to \$300.00 and made him sign an agreement that he would never put up another sign in the City of Portland. Some of these signs he put up after that time in the City of Portland. He just doesn't obey anybodies laws.

Councilor Daoust asked if these were the same kinds of signs that were found in Troutdale?

Hanna replied the white one is the exact sign.

Councilor Kight asked to the best of your knowledge when these signs were put up stating that his business was licensed, bonded and insured in fact he was not?

Hanna replied he was not.

Councilor Thompson asked does anyone else here wish to testify in favor of denying Mr. Nelson's license.

No further testimony was received.

Councilor Thompson stated according to our advice, there should be a short recess so Mr. Nelson may give the Presiding Officer written questions he would like answered by staff or anyone who testified in support of the decision to deny his application. Since he is not here we obviously can not do that. After he has given the Presiding Officer the questions Mr. Nelson wants answered, the hearing should be reconvened, and the Presiding Officer should solicit answers to Mr. Nelson's questions. Again he is not here so this cannot be done. After all his questions have been answered, Mr. Nelson should be given the final opportunity to address the Council and, in doing so, he may rebut the testimony and evidence that was presented. After his rebuttal the hearing should be closed, and the Council may deliberate. The Council should decide whether to affirm, modify, remand or reverse the decision denying Mr. Nelson's business license application. Upon making the decision, the Presiding Officer should instruct staff, or the City Attorney to prepare findings and a written decision for the Council to review and adopt at the next City Council meeting. I will now close the hearing.

MOTION: Councilor Ripma moved to affirm the Mayor's decision to deny the license. Councilor Kight seconded the motion.

Councilor Ripma stated Mr. Nelson's inability to comply with applicable laws and ordinances both in Troutdale and around the region does constitute an endangerment to public health safety and welfare.

Councilor Kight stated Mr. Nelson has a long history of not complying with any laws and regulations. He has affected a lot of people, he affects the Police Department, Jack Hanna, the two folks who showed up tonight who are trying to make their city a better place to live by cleaning it up. This is a man who simply doesn't follow any rules or regulations.

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

Allen stated in follow up you should direct staff or the City Attorney to put that decision in writing and bring it back just on the consent agenda for your adoption and then the written decision needs to be mailed out to Mr. Nelson.

Councilor Kight asked what is the next step if he continues to operate in the City of Troutdale?

Allen replied it would be to continue to cite him for violating City codes .

Hanna stated that Mr. Nelson was in court this morning for this charge. The Judge is aware of this hearing this evening and he has rescheduled him back for the first court date in April to find out the ruling of the Council and at that time he will be appearing before the Judge for operating previously without a license. The Judge will give him instruction at that point and probably put him on a bench probation and instruct him on what will happen if he proceeds to conduct business in Troutdale.

Councilor Thompson instructed the City Attorney to prepare the written decision for approval at the next City Council Meeting.

3. Adjournment

Meeting was adjourned at 11:35pm


Paul Thalhofer, Mayor

Dated: 4-30-99

ATTEST:

Debbie Stickney, City Recorder